THE DECLARATION OF PARIS OF 1856.

THE DECLARATION OF PARIS OF 1856:

BEING

AN ACCOUNT OF THE MARITIME RIGHTS OF GREAT BRITAIN; A CONSIDERATION OF THEIR IMPORTANCE; A HISTORY OF THEIR SURRENDER BY THE SIGNATURE OF THE DECLARATION OF PARIS; AND AN ARGUMENT FOR THEIR RESUMPTION BY THE DENUNCIATION AND REPUDIATION OF THAT DECLARATION:

BY

THOMAS GIBSON BOWLES, M.P.

"Since the Declaration of Paris, the fleet, valuable as it is for preventing an invasion of these shores, is almost valueless for any other purpose."

THE MARQUIS OF SALISBURY, K.G., 1871.

"We must see how we are to get rid of this rubbish."

PRINCE BISMARCK, 1870.

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PREFACE.

THE purpose of this volume is to bring together, in summary form, the principal facts relating to the Declaration of Paris of 1856, with the considerations arising therefrom; and, if it might be so fortunate, to win thereto, in some degree, the public attention.

So little of that attention has hitherto been given to this matter that many of the facts herein cited are often ignored, and some of them denied, even by those few who occasionally deal with the subject.

That the subject itself is of the utmost moment can be doubted by none. That the present position of Great Britain in regard to it is satisfactory or even tolerable has never been asserted by any. The Declaration of Paris has no friends. As it stands, all who have considered it agree in denouncing it as having created a situation in which Great Britain cannot possibly remain, and from which it is most urgent that she should extricate herself. Yet in that situation she still remains. All agree that something must be done; yet nothing is done. Neither will anything be done until, if it be so, the British people in general become fully sensible of the tremendous character of the issues involved, and generally determined to resume those maritime rights which were filched from them in 1856 under the circumstances related in the following pages.

This is no new thing. The contest, between the desire of the Continental military powers on the one

hand to abridge these rights, and the determination of Great Britain on the other hand to maintain them unabridged, which was begun in 1752, and which was conducted by Great Britain with ever increasing resolution throughout years of ever increasing stress and danger, was ended, for the time, by the secret surrender of the rights made in the Declaration of Paris at a moment when no stress or danger was. What is new is the indifference with which that surrender has been generally regarded or ignored.

But for that surrender the present most lamentable war in South Africa would have been shorter and less bloody. But for that surrender all merchandise, the produce and property of the Transvaal or of the Orange Free State, would now be liable to capture at sea and to confiscation as lawful prize of war, whatever might be its nature or destination, and under whatever neutral flag it might be found. But for that surrender Great Britain might capture every ounce of gold produced in the Transvaal and shipped to Europe in payment for arms, ammunition, or services of any kind. But for that surrender she could capture every kind of merchandise destined to and the property of the enemy, whether contraband of war or not. In short, but for the Declaration of Paris Great Britain could *stop the Supplies* of the Transvaal carried to it under neutral flags, as well as the payment for those supplies carried from it under those same flags. In consequence, however, of the signing away of her rights by the Declaration, she can, as she now stands, capture and confiscate only what may be decided to be contraband of war, and nothing else whatever; a restriction of her rights under the Common Law of Nations so great as to have brought, in practice, inability to exercise even the right that is left, and

to force her irresistible Navy to look helpless on at the supply of her avowed enemies by her professed friends. In a word, by the Declaration of Paris Great Britain is debarred from the use of the most potent and merciful method of the capture and confiscation of merchandise; and is driven to rely alone upon the far less potent and most unmerciful method of the slaughter and destruction of men.

It is sometimes assumed that the responsibilities of Great Britain begin and end with the defence of the British Islands against invasion. This is far from being the case. She is no whit less responsible for the defence of India and of her other possessions and colonies scattered throughout the world. Besides that, moreover, she is bound by the most solemn engagements, some of them of great antiquity, with reference to the territories of other countries which she has guaranteed.

Thus, she has guaranteed that Belgium "shall form "an independent and perpetually neutral State," and shall "be bound to observe such neutrality towards "all other States," by Article VII of the Treaty of 19th April, 1839.

She has undertaken "in case of the attack of an in- "vader to protect Chusan and its dependencies, and "to restore it to the possession of China as of "old," by Article IV of the Treaty of 4th April, 1846.

She has guaranteed that the Grand Duchy of Luxembourg "shall henceforth form a perpetually "neutral State," and "shall be bound to observe "the same neutrality towards all other States," by Article II of the Treaty of 11th May, 1867.

She has given a "guarantee to His Majesty the "King of Prussia his descendants and successors," of

"the possession of" that portion of Saxony ceded to him by the Treaty of 9th June, 1815.

She has guaranteed the integrity and the perpetual neutrality of Switzerland by the Declaration of 20th November, 1815.

She has guaranteed as against Russia, the territories of the King of Sweden and Norway, and has undertaken, in case Russia should make "any proposal or "demand" of cession or exchange thereof, "to furnish "to H.M. the King of Sweden and Norway sufficient "naval and military forces to co-operate with the "naval and military forces of his said Majesty for "the purpose of resisting the pretensions or aggres- "sions of Russia," by Article II of the Treaty of 17th November, 1855.

She has guaranteed "the independence and the "territorial integrity" of the Ottoman Empire by Article VII of the Treaty of 30th March, 1856.

She has guaranteed Greece as "a monarchical, in- "dependent, and constitutional State" by the Treaty of 7th May, 1832, and by Article III of the Treaty of 3rd August, 1863, and the "perpetual neutrality" of the Ionian Islands under Article II of the Treaty of 14th November, 1863.

She has especially guaranteed as against Russia all the Ottoman possessions in Asia, and "if any attempt "shall be made at any future time by Russia to take "possession of any further territories of H.I.M. the "Sultan in Asia," then "England engages to join "H.I.M. the Sultan in defending them by force of "arms," by Article I of the Treaty of 4th June, 1878.

She has engaged herself to "respect the independence" of the Sultan of Muscat by the Declaration of 10th March, 1862.

She has placed on record her "sincere desire to

maintain" as well as to "respect and promote the integrity and independence of Persia, by an agreement with Russia embodied in correspondence extending from 1834 to 1888."

And most especially and most repeatedly has Great Britain guaranteed her most ancient ally, Portugal. By the Treaties of 16th June, 1373, of 9th May, 1386, of 20th July, 1654, of 28th April, 1660, of 23rd June, 1661, and of 16th May, 1703, the strictest alliance is stipulated between the two countries, and the most complete obligation by Great Britain to defend not alone Portugal itself, but also (by the Treaty of 1661) "to defend and protect all con-"quests or colonies belonging to the Crown of "Portugal against all his enemies, as well future as "present"—an obligation which seems to extend even to Delagoa Bay.

Thus, either singly or together with other Powers, Great Britain is under the most serious and solemn Treaty engagements with respect to Belgium, Luxembourg, Switzerland, Sweden, Turkey, Portugal, Greece, Muscat, Persia, and China, engagements which might at any time only be capable of being carried out by force, and for the forcible carrying out of which all her power might not be too much. In view of responsibilities so great, and of an area of liabilities so extended, it would be at least prudent to consider betimes how far it is prudent, or even safe, to forégo the major portion of her main power on the seas.

Whether under any circumstances Great Britain should tamely submit to be deprived of her offensive power at sea; whether under present circumstances she can safely submit to it; and whether, in the face of the undisguised hostility and the scarcely dis-

guised aggressive schemes of Continental military States, she should not now resume that power which alone has ever enabled or ever can enable her to hold her own against them; these are questions which affect not less the issue of the present war in South Africa than the fate of the Empire and the future of the Kingdom.

If to matters so urgent and so momentous, these imperfect and inadequate pages avail to draw some attention, their end will have been achieved.

T. G. B.

25, Lowndes Square,
10*th March*, 1900.

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CHAPTER I.

The Defences of Great Britain.

We who live in Islands have not to choose what or where our defences shall be. Nature herself, which has brought to our doors the waters that wrap the earth, has taught us plainly that by the sea alone shall an enemy reach us or we him. She has taught us that the sea is the gate and the rampart of our house, and the waters our battlefield, from which none can debar us, and which while we hold them, as we may, are our sure barrier against the world. If there be methods of making war at sea so effectual that they can reach and paralyze the very heart of land-locked nations remotely seated in continents; if there be means of opposing sailors to soldiers and fleets to armies so powerful that to control the seas is to coerce the land; then indeed the British Empire may be secured against all danger from without. If not; if it be that, from any cause whatever, we are found impuissant at sea, and unable by acting there to produce any impression, then the days of the British Empire are numbered.

There are such methods. They consist in stopping Supplies. They strike at the Material Resources of the enemy. They aim at Merchandise rather than at the Lives of Men. They have always proved as effectual as they are merciful. But they have been laid aside.

On land we are relatively weak. We have not and never can have an army any way comparable in point of numbers to that which any first-class Power could bring against us. Conscription and universal military service never should be and never can be established in England, unless it be by an alien invader after and as a result of the conquest and extinction of the country, as an independent state—when indeed these islands would become as fine a recruiting ground as Germany has found Poland to be, and Russia the Cossack territory. But even if it were established by ourselves for ourselves, it would not materially mend matters. It has been said, "the English infantry is the best in the world, luckily "there is not much of it," and it is indeed *because* there is not much of it that it is the best, *because* it does not forcibly enrol those who are fitted only for peaceful avocations, and invites those alone who have the taste and capacity for a soldier's life. Most men are peaceably inclined. If we were to take the operatives from every town, every tailor from his board, every ploughman from his plough, and every clerk from his desk, we should indeed increase the numbers of our army, but it would be at the expense of its fighting power. Putting aside therefore the probability that neither conscription nor any system of universal military service would be endured, we may easily conclude that what we must be content with in land forces is a small but efficient army. One

numerous enough to cope with that of any of the first-class Powers we cannot look for and should not desire; one large enough to act as a powerful auxiliary to our maritime force, and to furnish if necessary contingents for foreign service, we may have on terms which will still make it the best in the world.

Very different are matters when we look to our great and natural defence, the Sea. On this it is as easy for us to be the strongest in point both of numbers and of quality as it is impossible on land. The mere fact that our seafaring population is far greater than that of any other nation is enough to establish this; and standing beside that fact and doubling its importance, is this other—that while every landsman is not fit to fight, every seaman is fit. Indeed, if taken all round, our land population is probably less fitted than that of many other nations who lead a simpler and harder life, to undergo the fatigues and privations of war; so that the fighting power to be got out of it is less in proportion were it all drained into the army, than is to be got out of nations whose main work is on the land. But this is precisely because in a maritime nation like ours the flower of its manhood is always found in the seafaring classes. The sea has no place for any but strong, bold, and daring men, and it is of such alone that good fighters are made. To compare our land population with that of other nations, for numbers only, is therefore fallacious in one way, because a large proportion of the best of ours have been taken out of the land for the sea, while the best of theirs remain; and to compare our seafaring population for numbers with theirs is equally fallacious in another way, for seafaring is our principal business and takes our best men.

Now in 1898 the official returns[1] show that there were belonging to the United Kingdom and her Colonies merchant vessels of an aggregate tonnage of 10,503,307 tons (net tonnage), manned by 242,553 men, in addition to which there were over 104,000 fishermen, the hardiest of seafarers, besides the 200,000 seamen estimated to be employed in the merchant and fishing vessels of British possessions, and the 100,000 men of the navy, which would give a grand total of over 600,000 men. All other nations together, in 1895—the last year for which complete figures are furnished—owned vessels of an aggregate tonnage of 12,973,302 tons. I have been unable to obtain the number of the crews of the Foreign vessels; but, assuming them to be manned in the same proportion per ton as ours, we find that Great Britain possesses about one-half of the whole merchant tonnage, and at least the same proportion, or one-half, of the whole mercantile seafaring population of the world. Relatively weak in numbers though we be on land, we are as strong at sea as all the rest of the world put together.

It is true that on the land we are the weakest of all great Powers; it is equally true that at sea we are the strongest; and it follows that we must mainly if not alone rely for our defence upon the power of waging war effectually at sea.

Equally does it follow that we must rely upon this mainly if not alone for our tranquillity, which

[1] Tables showing the progress of British Merchant Shipping, issued by the Board of Trade, 18th June, 1897, p. 19. It is to be remarked that the *gross* tonnage of British vessels would be nearer 14,000,000 than 10,000,000 tons, and that the tonnage of other countries is often more nearly like our "gross" than our "net" tonnage. See also Annual Statement of Navigation and Shipping of the United Kingdom for 1898, pp. 297, 384, and 389.

is in these days more than ever dependent upon the knowledge that we are armed and able to keep our own.

And it follows above all, that if we content ourselves with the power of waging war at sea otherwise than effectually, our seeming defence is a real snare, and we the present sport and future victims of a fatal hallucination.

CHAPTER II.

The Lost Notion of War.

To three generations of Britons war has been unknown—war, that is, which touched themselves and involved risk to their own homes, lives, liberties and fortunes. They have, indeed, seen wars; they have even made wars, and have paid out of their abundance the cost of wars; but never have they had any experience of such a war as put themselves and the British Islands, British laws and liberties, or even British trade in jeopardy. Since 1815 no inhabitant of these islands has felt the actual touch or stress of war, or so much as the apprehension of either. Consequently it has not seemed necessary so much as to consider the nature of war, still less to entertain the various problems to which actual war gives rise, or the necessary laws under which it must be waged, as practical matters, or any otherwise than in academical discussion. And so it would seem that the very notion of war has been lost.

This is the more remarkable because, so long as war was present with us as a matter of serious actual experience and serious actual risk, the national mind was strongly bent to consideration, discussion, and decision of all the moot points connected with it. Nowhere was more attention given than in England during the eighteenth century to the problems that arise from it; and it is hardly too much to say that,

if the great principles of the Law of Nations were laid down and established by such great Continental thinkers as Grotius and Vattel, it was mainly the English jurists, Prize Courts, and text-writers who reduced those principles to systematized practice as regards maritime warfare, for which Sir William Scott (Lord Stowell's) decisions alone provide a principled and reasoned rule of conduct in almost every conceivable case. But when the great struggle with Napoleon was over, the British people seem to have flung away all thoughts of war, and to have gradually been brought to the comfortable persuasion that there had at last opened for the world an era of universal peace, universal commerce, and universal great exhibitions. The frame of mind no longer existed which produced such masterpieces as the Duke of Newcastle's letter (inspired by Lord Mansfield, Sir George Lee, Dr. Paul, and Sir Dudley Ryder) in reply to the Prussian Memorial of 1752; Lord Liverpool's Discourse of 1759; and Ward's Treatise of 1801. British lawyers ceased to concern themselves with that Law of Nations which is to this day part of the Common Law of Great Britain, or limited their efforts to mere compilation and accounts of conventions; and if they have produced some respectable publications on this momentous subject, they have given to the world no great, nor even any remarkable work. Not one of them has even been found to this day to attempt to meet that crying need of the British Navy, which experience daily emphasizes—a Manual of the Law of Nations for the especial use of British seamen. Such a manual has, indeed, been compiled for French seamen in Ortolan's excellent work, *Règles et Diplomatie de la Mer*, originally published in 1844, and whereof there issued a

second edition in 1864; but no such service as this has ever been rendered by the British lawyer to the British seaman, who needs it far more than his French compeer, nor has Ortolan even been translated; and the British naval captain, often alone and far away from all counsel, is left, when confronted by a difficult case, to steer his way through the intricacies of the law without any other aid than he can derive from a few ill-chosen works on the Law of Nations in general, which he cannot find his way about, and which, if he could, often fail to meet the seaman's case in a way which a seaman can comprehend.

If, on the one hand, the study of the Law of Nations has in recent years suffered from the neglect of the capable, it has, on the other hand, suffered still more from the meddling of the incompetent and unauthorized, who from time to time get together, call themselves a Conference or an Institute, and promulgate "views" which are solemnly reproduced by the newspapers as though they meant something or had effected something. Thus, deserted by the competent, bemused and bemuddled by the incompetent, and left at last without light or guidance, the student of the Law of Nations has too often been reduced to despair, and has even been occasionally tempted to declare, as the sapient Swiss banker and "Alabama" arbitrator declared at the Geneva tribunal, "there is no such thing as international law."

This, indeed, would seem now to be the prevailing view among people in general, whether on the Continent or in these Islands; but in these Islands most especially. The current impression is that Law between Nations lasts till war breaks out, and that it then stops; that most especially in maritime

warfare it is replaced by complete anarchy; that there is thenceforth no rule but that of Donnybrook —"wherever you see a head, hit it"—and that, as the lieutenant in charge of a British cruiser engaged on the coast of Crete is reported to have said, it was his business, and is that of every man of war during the existence of hostilities, to fire into "anything "that comes along."

In fact, as the most superficial student of the Law of Nations knows, it is the very contrary that is the case. The major part of the Law of Nations is concerned with the laws of war; and instead of that law ending with peace, it rather begins with war, almost every conceivable incident whereof has been provided for by settled, agreed, recognized rules well established, universally admitted, and having for their guardians and expounders the Prize Courts, that construe, administer, and enforce them. For no relationship between nations has the Law of Nations laid down rules so precise, so clear, so sanctioned by practice as for the relationship of war. It may be added that for no relationship are such rules so necessary; and that were a war at sea ever to be begun in the belief that it need be subjected to no rules at all, the common necessities of both belligerents would immediately drive them both back to the law. Rules there must be, concerning Blockade, concerning Contraband, concerning Visit, Search and Capture, Prize good and bad, Parole, and Cartel, and even concerning the use of false colours and the affirming gun; nor has any war at sea ever yet been carried on without them. Prize Courts too there must still be, to construe and enforce the rules. And a Law of Nations there must still be, a body of law to which Prize Courts

may appeal, and without which they would find themselves destitute of any guiding principles in the exercise of their most delicate and important functions.[1]

The contrary notion, that there is no Law of

[1] The high estimate of the Law of Nations, and of its importance as part of the Common Law of England, held by English Courts, may be gathered from the following extract from p. 259 of Chisholme Anstey's *Guide to the History, the Laws, and Constitutions of England* (London, 1845). "Suppose, for instance, an Act of Parliament to be made against the Law of "Nations. That Act is null and void. It is not given to the "Legislature of any State to make Laws to affect, though it be "to ameliorate, the Condition of its Neighbours. The Courts, it "is true, will make every Construction of an Act of Parliament, "rather than hold it derogatory to the Law of Nations. If they "can, they will say, with Lord Mansfield, the Act did not intend "to alter the Law of Nations. But, if such a Construction be "inevitable, then they will hold the Act itself null and void; as "not warranted by the Law of Nations; that Universal Law "which will be carried as far in England as anywhere; which, as "it is rather the duty of the Courts to extend than to narrow, so "it is here adopted in its full Extent, by the Common Law, and "is held to be a Part of the Law of England itself; which "Acts of Parliament cannot alter; which is to be collected, together with the Rules of Decision concerning it, not from Acts "of Parliaments, but from the Practice of different Nations, and "the Authority of Writers;—and fixed and evidenced, by general "and antient, and admitted Practice, by Treaties, and by the "general Laws and Ordinances, and the formal Transactions of "Civilized States;—of which Acts of Parliaments have, from "time to time, been made to enforce, or Decisions to facilitate, "the Execution,—and are, therefore, to be considered, not as "introductive of any new Rule, but merely as declaratory of the "old fundamental Constitutions of the Kingdom;—and, finally, "without which, the Kingdom itself must cease to be a Part of "the civilized World."—Heatherfield *v.* Chilton, 4 Burr. 2016; Barbuit's Case, Ca. Tem. Talbot, by Forrester, 282; Triquet *v.* Bath, 3 Burr. 1840-1; Viveash *v.* Becker, 3 M. and S. 298; the Le Louis, 2 Dods. Ad. R. 249; IV. Bl. Comm. p. 60.

Nations, and that there need be no rules of warfare, has led already to some strange conclusions; as, for instance, that there may be reasonably adopted and lawfully employed such a device as a "Pacific Blockade,"—*i.e.*, a blockade, not arising out of a state of war, which state alone gives any ground for such interference with the rights of the place or coast in question, and of traders therewith, as is involved in the forcible prevention by a foreign Power of peaceable access to it. A "Pacific Blockade" is as much a contradiction in terms as a "Pacific War," nor could the very notion of such a contradiction be entertained except by those who have lost all idea of the difference between peace and war.

And, strangely enough, the notion that it is right and lawful to attack or to prohibit the trade of a Power with which the attacking or prohibiting State is at peace, is accompanied by the equally novel and strange notion that it is not right or lawful to attack or to prohibit the trade of a Power with which the attacking or prohibiting State is at war. The mere suggestion of the proposition that it is wrong to attack an enemy's trade in war would have been scouted by any of the generation of Englishmen who still remembered how England had, by this very means, and no other, conquered Napoleon. The other proposition, that it is right to attack a friend's trade in peace, is one so monstrous and untenable that it can only be advanced by those who believe that peace is war and war is peace.

Another current notion is that "Contraband of "War" is anything that the Government of a belligerent State chooses to declare to be such, and nothing else—though those who hold this notion appear usually to believe that, in case England were at war,

it is only the other belligerent that would have this power of declaring such and such things to be contraband, while England herself would have no voice in the matter. It is apparently altogether forgotten that the final and only fully adequate authority in such a matter is a Prize Court, administering, not the municipal laws of its country, still less the desires of its government, but the Law of Nations; and that no mere declaration by a belligerent of what is or what is not contraband is of any avail unless and until it is affirmed and confirmed by the reasoned decision of a duly constituted Prize Court. Thus the French contention that rice was contraband of war during the French operations in Tonkin in 1884 remains a contention only, for it was never brought to the test of a Prize Court decision.

What is certain is that all these wild imaginings would disappear at the first touch of naval war; that there would thereupon immediately ensue the old unavoidable respect for, reliance upon and appeal to, the Law of Nations, the Rules of Warfare, and the authority of Prize Courts as expounders of both.

A long peace has also given rise to some strange new ideas; not alone of the laws, but also of the practice of warfare, such as had never before been conceived, and could hardly have been conceived now but for the long absence of experience in the effect of actual fighting upon actual men, coupled with an exaggerated belief in the power of the greatly perfected modern naval armaments and defences to change, not merely the conditions of naval warfare, which they certainly must do, but Human Nature itself, which they as certainly will not and cannot do.

Thus naval officers, serving in the very latest and finest battleships, are heard to profess the belief that

from a modern naval action none of them will come out alive. Nevertheless, the teaching of all history is that the effect of improved armaments has always hitherto been not to increase but to diminish the loss of life in battle; and this for the very sufficient reason that, so long as men are men, their unconquerable tendency must and will be to fight at a greater distance from an enemy's gun the straighter that gun shoots and the more harm it does. Improvement in weapons has always hitherto meant increase in fighting distances, and of two combatants one at least will, and the other must, observe the rule. Thus the first great naval action between England and France, fought by Edward III. in 1340 at Sluys, in which bills and swords, bows and arrows played the chief part, resulted, as contemporary chroniclers say, in the slaughter of 30,000 Frenchmen, and the land battle of Crecy, six years later, in a similar number of slain—a degree of loss which has never been equalled or even approached in single battles since firearms were used, and which has steadily diminished in proportion to the perfection attained therein, so that neither the battle of the Nile nor that of Trafalgar will at all compare with Sluys in the number of slain, any more than Blenheim or Waterloo will compare with Crecy.

Again, it is often assumed that, as a rule, all naval actions will in future be "fought to a finish," that, generally speaking, all the vessels engaged will hold out to the very last, and that most of them will be sunk. Here again the experience of actual war leads to an opposite conclusion; and unless we are to believe that human nature has wholly changed, we must expect in the future what has always happened in the past—that, in the vast majority of cases, and

apart from accident, ships will surrender before they sink; that there will still be, as there always has been, a point beyond which human endurance cannot go; that when this point has been reached and overpassed, the flag will be hauled down without further resistance; and that when a certain amount of damage has been done to a ship and her armament, and a certain degree of loss inflicted on her crew, that ship will certainly rather surrender than sink, in the attempt to prolong a struggle now become equally hopeless and useless.

As a corollary to this, the notion seems to be generally prevalent that the only object that should be, or that need be entertained in naval warfare, is to sink and destroy the enemy, whereas in real warfare it was always recognized that a preferable object was to defeat, preserve, and capture him, and that only when this was impracticable was it necessary to seek to sink and destroy him. The effect of capture is twofold that of destruction; for the latter only deprives the enemy of ship and crew, whereas the former both does that and brings them into the victor's possession for use, adds prize to victory, gives prisoners for exchange, effects a greater result with a less loss of life to the vanquished, produces a far greater moral effect to the advantage of the captor and the disadvantage of the captured, and so does far more to bring the war towards a conclusion by the submission of the enemy.

Another new notion of a still stranger nature has so taken possession of the naval mind, that whole flotillas have been built in the belief of its soundness, and elaborate systems of harbour-defence constructed to provide against these flotillas. This is the notion that warlike operations of the deadliest kind may

reasonably and advantageously be conducted by vessels of war without even previously ascertaining, of a certainty, whether those against whom they are directed are friends or foes. It is upon this notion, and upon this alone, that the whole conception of torpedo-boats and of torpedo warfare, as conducted by those boats, can alone rest. The torpedo-boat claims to be a vessel of war, and her officers and crew would undoubtedly, in case of capture, expect and claim (what could hardly be denied to them) honourable treatment as prisoners of war. Yet the assumption upon which alone she can be expected to succeed, or even to come near to success, in her deadly work, is that she is to adopt a course of action wholly unlike that of a vessel of war—that she is to hoist no true colours, fire no affirming gun, nor even answer any hail, but is secretly to creep in unannounced, unheard, unseen, to discharge her torpedoes, and to fly for her life. Her methods are essentially those of the cloaked midnight assassin, not those of the man-of-war ; and since, in the case of the assassin, it is essential that he should assure himself that the victim he dogs with his silent, upraised dagger is really his enemy and not his friend, since it is even more essential in his case than in the case of the open fighter, that before he strikes he should be sure, so is it equally essential in the case of the torpedo-boat; for a mistake once made cannot be rectified or remedied. Yet the notion obtains that the business of the torpedo-boat is, if she can, to sink any battleship she meets at sea and takes for a foe, without previously verifying of a certainty whether it is a a friend or a foe. Verification, it is truly enough said, would involve the disclosure of herself and of her own character ; and since, if she is once seen and

recognized, she would in all probability be herself destroyed, her only chance is to destroy without sign or question: wherefore she must hoist no colours, make no disclosure of her presence, no affirmation of her character, and no attempt to exchange with the battleship that "private signal" which in real war has always played so important, so salutary, so safeguarding, so necessary a part. She is to torpedo the battleship and to fly, trusting that it is an enemy she has sunk, but never sure that it is not a friend. The necessary corollary to this novel notion of warfare is the adoption of another new notion, namely, that as the torpedo-boat is to treat the battleship, so is the battleship to treat the torpedo-boat; that all torpedo-boats whatever are to be held as vermin, and that the business of a battleship is to sink, without private signal, parley, or question, every single torpedo-boat or torpedo-destroyer that unexpectedly approaches her, either at sea or in harbour. The experience of real war has, however, established beyond all doubt the supreme necessity for absolute verification of the true character of any vessel unexpectedly met at sea, before proceeding to fight her; it has shown, moreover, that, even when this necessity has been fully understood and every security to meet it, including the private signal, has been duly used, the most appalling mistakes have often occurred; nevertheless, the notion is now entertained that, in the case in question, the necessity may be disregarded, and that all the securities bred of actual experience may be abandoned.[1]

[1] The following illustration of these remarks occurred during the Spanish-American War of 1898: "The great uncertainty and "risk of mistake, which are such serious arguments against "torpedo-boat warfare, are well illustrated by an incident which

If, indeed, this new notion should be acted upon, mistakes more appalling than any that have hitherto occurred will be inevitable. It is to be expected, however, that the new notion will be so modified as to become identical with the old conviction, that verification is absolutely necessary before fighting; in which case the private signal will recover all its uses and all its importance, and it will be recognized that the torpedo-boat can no more safely or prudently be used than any other vessel of war to sink a ship, unless and until it has absolutely ascertained to a certainty the enemy character of that ship, either by use of the private signal, by undoubted surrounding circumstances, or by the fact that the ship is actually lying in an enemy's port as part of that enemy's forces—for the fact alone of her being in such a port would not of itself suffice, since she might be a neutral man-of-war. When the notion is brought back to this it will be reasonable enough. But it will then have lost all that is novel in it, and the torpedo-boat will then also have lost many, if not most of the uses expected from it, and many if not most of the exaggerated terrors that surround it.

"Lieutenant Fremont of the 'Porter' records. About 2 a.m. "one morning a steamer was reported running the blockade into "Havana. The 'Porter' gave chase, closed her fast, got within "easy torpedo distance, and then made the night signal. It "was not answered. A second time it was repeated and a gun "fired, followed by a second. The stranger replied with the "wrong signal. The 'Porter' went full speed—the stranger "opened fire, and only in the very nick of time was the supposed "blockade-runner made out to be an American ship. Torpedo-"boats, it should be said, were always fired upon first and "inquiries were only made subsequently. Nothing could have "saved the big ship in this instance, and the torpedo-boat "could not have been much injured."—*The Downfall of Spain*, by H. W. Wilson, London, 1900, p. 438.

Again, the belief in the advantage of missile weapons over all others, which originated in actual fighting experience, which began with the successful pitting of the English bowman with his cloth-yard shaft against sword, lance, and body armour combined in their greatest perfection, and which has lasted from Sluys to Trafalgar, has in recent times been rudely assailed, and precisely there where it might have been expected to be most unassailable—in the case of the ship and the great gun. Admiral Sir Gerard Noel, a distinguished naval officer, who from 1893 up to 1898 was a sea lord of the Admiralty, recorded his own convictions in 1874 in an essay which, from among many others, was selected for the prize by such other distinguished officers as Admirals Milne, Ryder, and Cooper Key; and they are as follows:

"In a general action I do not hold that the guns will be the "principal weapon; but should the ship's engines or steering-"gear be disabled, temporarily or permanently, her guns will "become all-important. *Then* let her show the enemy what "gunners can do. . . . I am not myself of opinion that artillery "is the most important weapon in a fleet. It is, I believe, very "generally held by those officers who have studied the arma-"ment and manœuvring of fleets that the *ram* is fast supplant-"ing the gun in importance."

So too Captain (subsequently Admiral) Colomb in his *Lessons from Lissa* says:

"The serious part of a future naval attack does not appear to "be the guns but the rams."

And so also Captain Pellew in his lecture on *Fleet Manœuvring* says:

[1] *The Gun, Ram, and Torpedo*, Prize Essay by Commander Gerard H. U. Noel, R.N. J. Griffin and Co., 1874.

"Rams are the arm of naval warfare to which I attach the "chief importance. In my opinion the aim of all manœuvring "and preliminary practice with the guns should be to get a fair "opportunity for ramming."

The fact that British battleships are still fitted with rams suggests that disbelief in the superior importance of the missile weapon still obtains among naval officers, and still prevails among the naval lords of the Admiralty. Yet nothing is more certain than that all history and all the experience of actual naval warfare show the great gun to be, of all others, the weapon of the ship, and, of all others, that by which all naval battles have been decided. It seems, therefore, not impossible that actual naval warfare may have, as one of its first effects, to restore the belief, which actual warfare first created, in the supreme importance of the gun, and not merely to establish its superiority over either the ram or the torpedo, but to relegate both ram and torpedo to the limbo of scrap-iron.

CHAPTER III.

The Final Object of War.

While an infinity of speculations have been indulged as to the actual probable methods of modern naval warfare, and an infinity of theories thereon have been successively adopted—some to be abandoned almost as soon as adopted, others to be embodied in new vessels, new weapons, and new harbour works—yet little attention seems to have been paid or thought given by the propounders of these speculations and theories to the fact that all these operations are but means to an end. The final object and end of all warfare is to reduce the enemy to submission; and unless the operations of naval warfare can be made so to act upon the enemy as to diminish his material resources for the continuance of the war, so to injure him as to produce weakness and weariness, and so to increase that weakness and weariness as to bring him nearer to submission—unless this effect be caused, the operations themselves, however brilliant or glorious, must be held to have failed in their object. To kill, burn, destroy, capture, and proclaim victory is but to have caused the submission of the enemy's naval forces immediately effected, and unless it has so considerable an effect on the enemy's Government as to bring the latter appreciably nearer to submission, is less a proper occasion for joy and triumph than for sadness and shame.

It is to be remembered that it is not with the defeated commanders, but with the enemy's Government, that the decision rests, and that the loss of a ship, of a fleet, or even of a whole navy may conceivably leave that Government so uninjured in its material resources, so unimpaired in its power to levy men and money, as to be of no present effect in inducing it to seek peace. This was so with Trafalgar, which, although the most complete naval victory of modern times, so little availed to bring Napoleon to submission that it was immediately followed only six weeks later by his victory of Austerlitz, which in Pitt's words "rolled up the map "of Europe," was succeeded by his victory of Friedland in June, 1807, and his alliance with the Russian Emperor at Tilsit, and was followed not by peace, but by precisely eight years of incessant war, ending only in Napoleon's defeat at Leipsig in 1813. That which did affect the final end and object of the war was the incessant sap of the enemy's trade which followed Trafalgar; the denial and almost complete prevention of all international intercourse by sea, brought about by the unobtrusive yet constant action of British cruisers and privateers; the consequent enormous raising of prices on the enemy's subjects, and the resulting distress and diminution of their taxable capacity. That it was which in 1807 was felt so much by Russia that she rather chose to break with Napoleon than continue its endurance, that it was which really brought about Napoleon's disastrous Moscow campaign and the sixth coalition, which ruined him. In short, where Trafalgar had failed, capture of property and stoppage of trade succeeded, for while the former brought great glory yet had little effect, the latter had great effect though it

brought little glory. The statesman who would shape means to ends must therefore value the latter far more than the former, though he will not forget that the former rendered the latter possible. The naval officer and the student theorists and prophets of naval warfare—whether professional or amateur—have, however, naturally enough (with the single exception of Captain Mahan) rather dwelt upon the former than the latter, and do still so dwell. It is the old story so often told and so rarely remembered. "There was a little city, and few men within it; and "there came a great king against it, and besieged it, "and built great bulwarks against it: Now there was "found in it a poor wise man, and he by his wisdom "delivered the city; yet no man remembered that "same poor man."

Moreover—and here, indeed, seems to be the root of the whole matter—there have arisen strange new conceptions of the very nature of war itself. Not alone in the popular mind, but also among certain politicians and certain students of the Law of Nations, animated by a desire to "humanize war," there has been revived the notion which constantly recurred during the Middle Ages, that war might be restricted in its operations to a selected few persons only of the nations involved. In the Middle Ages, indeed, the suggestion was that national disputes should be settled by single combat between the sovereigns, and solemn proposals of personal duels to this effect were many times made by one sovereign to another. The modern form of the notion, however, does not push it so far, and, instead of suggesting that war may be reduced to a duel between two sovereigns, is limited to the suggestion that it may be reduced to a duel between Governments—including their whole

military and naval forces, but no others—while the peoples are left aside at peace with each other, continuing relations of amity, carrying on their trade and fulfilling their contracts each with the other as though no war existed. Though the attempt at the Conference of Brussels of 1874 to make an advance towards this notion ended in foredoomed failure, the inherent contradictions and absurdities of the notion itself have not prevented it from gaining advocates, who apparently have never asked themselves whether, and if so, how, a Government can be dissociated from its people; how a Government can exist at all without a people; what a Government is, except the power of levying men and money from its people; whether it would or could suffice to vanquish one Government with its one army and navy, when (as indeed happened in France in 1870) it might be succeeded by another Government with another army and navy, and that by another until the people (to whom at last it must all come) were exhausted; or whether it is conceivable that out of every ten of the people, one should be engaged in killing and injuring the enemy while the other nine are engaged in keeping him alive and assisting him—in short, that the people should be divided into two parts and that each part should be invited to act, not with, but against the other—whether, in fine, it is conceivable that civil war should always and of necessity be added to foreign war?

"Why," asks Dr. Macdonell (in a lecture delivered at the Royal United Service Institution in July, 1898), "why, when "you come to think of it, should the payment of debts due by "the subjects of one belligerent to the subjects of another, be "either voided or suspended?"

One might as reasonably ask why the subjects of one belligerent should be sent to shoot the subjects

of another, or why the subjects of the one should go on paying taxes to furnish means for the destruction of the subjects of the other. Is it reasonable, or humane, or consistent, or anything but absurd, that there should be hatred and war between Governments and armies, and yet amity and peace between the subjects, who alone furnish the means of maintaining those Governments and armies? Can there be any war at all that does not amount to a contest between the whole nation on one side and the whole nation on the other? If there can, the conditions of that war have never yet been formulated, nor can be; and the only attempts that have been made to approach their formulation, contemplate what is not war at all.

Still less has any such war ever been waged as one involving an official war together with a popular peace. It has, indeed, occasionally suited the purpose of an aggressor to profess the purpose, but the practice has as invariably falsified the profession. The "Guerre aux palais, paix à la chaumière" of the French Revolution destroyed ten thousand cottages for one palace and killed a hundred thousand cottagers for one prince. The King of Prussia's proclamation on invading France in August, 1870, was:

"Je fais la guerre aux soldats et non aux citoyens français," and added, "ceux-ci continueront, par conséquent, à jouir d'une "complète sécurité pour leurs personnes et leur biens aussi "longtemps qu'ils ne me priveront eux-mêmes, par des entre-"prises hostiles contre les troupes allemandes, du droit de leur "accorder ma protection."

Yet, four months later, the same King of Prussia issued from his head-quarters a decree, countersigned by Bismarck and Roon, condemning to confiscation of their property any inhabitant of the French provinces of Alsace and of Lorraine who might join the

French forces, and applying the same punishment to any inhabitant of those provinces who was absent from his home during more than eight days.[1]

General Von Goeben, commanding the German forces at Rouen, went even further, for, by his order of 5th December, 1870, he ordered that any person

[1] "DÉCRET.—Nous, Guillaume, roi de Prusse, ordonnons, pour "les gouvernements généraux de l'Alsace et de la Lorraine, ce "qui suit :

"*Article Premier.*—Quiconque rejoint les forces françaises est "puni d'une confiscation de ses biens actuels et futurs et d'un "bannissement de 10 années.

"*Art.* 2.—La condamnation a lieu par un arrêt de notre "gouvernement général, qui, trois jours après sa publication dans "la partie officielle d'un journal de ce gouvernement, entre en "vigueur et doit être exécuté par les autorités civiles et militaires.

"*Art.* 3.—Tout paiement ou remise qui serait fait plus tard "aux condamnés est regardé comme nul et non avenu.

"*Art.* 4.—Toute donation entre vifs et après décès, que le "condamné a faite après ce décret concernant sa fortune ou des "parties de sa fortune, est nulle et non avenue.

"*Art.* 5.—Quiconque veut quitter son domicile doit en de-"mander la permission au préfet, par écrit, en indiquant le but "de son départ. Quiconque est absent pendant plus de huit "jours de son domicile sans permission est supposé, en droit, "avoir rejoint les armées françaises. Cette supposition suffit "pour entrainer condamnation.

"*Art.* 6.—Les préfets ont à établir et à contrôler des listes de "présence de toutes les personnes mâles.

"*Art.* 7.—Le produit de la confiscation est à livrer à la caisse "du gouvernement général.

"*Art.* 8.—Le retour du bannissement entraine la peine "édictée par l'article 33 du Code pénal.

"*Art.* 9.—Ce décret entre en vigueur à partir du jour de sa "publication.

"Fait au quartier général de Versailles, le 15 décembre 1870.

"GUILLAUME,

"DE BISMARK, DE ROON."

Page 82, *Recueil de documents sur les Exactions, Vols, et Cruautés des Armées Prussiennes en France.* Feret, Bordeaux, 1871.

who voluntarily served as guide to the French troops, or destroyed roads, bridges, telegraphs, or railways, or any private person who might have borne arms against the troops of the King of Prussia or his allies, should be punished with—Death.[1]

General Wenden, by his order of 10th December, 1870, ordered that any person not belonging to the French regular army or the National Guard, if found provided with an arm, or found committing an act of hostility against the general's troops, should be considered as traitor and hanged or shot without other form of trial.[2]

[1] "(2) Sera puni de mort quiconque aura volontairement servi "de guide aux troupes françaises.

"(3) La même peine sera appliquée à celui qui, servant de "guide aux troupes de S. M. le roi de Prusse et de ses augustes "alliés, aura été convaincu de mauvaise foi.

"(4) Sera puni de mort celui qui, par esprit de vengeance, ou "par avidité, aura pillé, blessé ou tué un individu quelconque "appartenant aux armées alliées contre la France.

"(5) Sera puni de mort quiconque aura détruit des routes, "ponts, canaux, télégraphes ou chemins de fer. La même peine "sera appliquée à ceux qui auront incendié des édifices, arsenaux, "ou magasins militaires.

"(6) Sera puni de mort tout particulier qui aura porté les "armes contre les troupes de S. M. le roi de Prusse et ses "augustes alliés.

"(7) La présente proclamation entrera en vigueur dans toute "l'étendue du district occupé par le 8e corps d'armée dès qu'elle "aura été affichée dans une localité quelconque de ce district.

"Rouen le 5 décembre 1870.

"Le général commandant le 8e corps d'armée,

"VON GOEBEN."

Page 50, *Recueil de documents sur les Exactions, Vols, et Cruautés des Armées Prussiennes en France.*

[2] "PROCLAMATION.—On rappelle aux habitants la proclama- "tion suivante du commandant en chef de la 2e armée allemande "en date du 31 août 1870.

"Le commandant en chef de la 2e armée allemande fait recon-

Thus we have the King of Prussia confiscating the private property, and his generals taking the private lives of the French without the least scruple, and professedly in the very name of the laws or usages of war, which some would profess to believe prescribe that neither private property nor private life can be touched on land by virtue of those laws and usages.

There is, however, more than this. In November, 1870, the Prussian Minister of War, then in Versailles, ordered that

"all valuables found in houses deserted by their owners, if not "reclaimed within a certain time, were to be confiscated for the "benefit of the war chest;"

while Bismarck was asking,

"Why do they continue to make prisoners? They should have "shot down the whole twelve hundred one after the other."[1]

The American General Sheridan, then with the German armies, had previously, in conversation with Bismarck, put *his* view of war thus:

"The proper strategy consists in the first place in inflicting "as telling blows as possible upon the enemy's army, and then "in causing the inhabitants so much suffering that they must

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"naître derechef par le présent arrêté, que tout individu qui ne "fait partie ni de l'armée régulière française, ni de la garde "nationale mobile, et qui sera trouvé muni d'une arme, portât-il "le nom de franc-tireur ou autre, du moment où il sera saisi en "flagrant délit d'hostilité vis-à-vis de nos troupes sera considéré "comme *traître* et *pendu* ou fusillé, sans autre forme de procès.

"Je préviens les habitants du pays que, selon la loi de guerre, "seront responsables toutes les communes sur le territoire "desquelles les délits prévus auront lieu.

"Boulzicourt, le 10 décembre 1870. Le général major, "et commandant de la 3e division de réserve.

"WENDEN."

Page 72, *Recueil de documents sur les Exactions, Vols et Cruautés de Armeés Prussiennes en France.* Feret, Bordeaux, 1871.

[1] *Bismarck*, by M. Busch, vol. i., pp. 170, 280.

"long for peace and force their Government to demand it. The "people must be left nothing but their eyes to weep with over "the war"

—a frank yet hardly exaggerated statement of the sharpest and shortest way with war, which, as it recalled the devastation of the Shenandoah valley—over which, as was said, "not even a crow could fly unless it carried its rations in its beak"—so it was pursued by Germany in France whenever (as at Bazeilles) the German generals thought it expedient. And the final and crowning commentary on the Emperor's proclamation was the exaction from France of that war indemnity of £200,000,000, every penny of which was supplied by the citizens who had been promised "complete security for their persons and "their property," and not one penny by the soldiers against whom alone the war was professed to be made!

The grounds, indeed, on which it can justly or reasonably be claimed that the citizen shall be exempted from the war so long as he is unofficial and un-uniformed, while the citizen official or uniformed is to remain subject thereto, appear upon inquiry to be slender indeed. For it is the former citizen who creates the latter, who pays him, uniforms him, and provides him with the implements of destruction, who renews those instruments as they fail, who renews the men themselves as they are killed, and who reserves for those of them who fail or fly his severest blame, for those of them who succeed or conquer his greatest praise and his highest honours. The Soldier or the Sailor who fights is but the instrument of the Citizen who pays; and if we needs must apportion the guilt of war as between them, it is upon the Citizen that the greater share of the guilt must rest, upon the Citizen

that the greater portion of any punishment for guilt should justly fall. Without the wealth of the Citizen to supply that money which has been called the sinews of war, not a Soldier could take the field nor a Sailor leave port; nay, neither of them could so much as have come into existence as either Soldier or Sailor. The six successive coalitions against France formed during the twenty years from 1793 to 1813 were mainly supported by subventions from the wealth of England; it was these subsidies alone that enabled Russia, Austria, and Prussia to put troops into the field; and although not an English soldier was present at most of those battles, it was England who was always the principal and most terrible enemy by whom Napoleon found himself encountered, at Austerlitz, at Eylau, at Friedland, at Wagram, and at Leipzig. None better than he knew, nor oftener said, that the true source of the resistance he encountered in Europe was the wealth of England; neither was any one of his purposes more frankly avowed than the purpose of destroying that wealth by striking at that trade which he well knew to be its origin, and of thereby stopping the apparently inexhaustible flow of guineas springing up into armed Russians, Austrians, and Prussians. Nor can it be denied that he saw clearly and judged aright, or that it was less the fighting Soldiers or Sailors than the tax-paying Citizens of England who for so many years kept alive the resistance to his ambitious projects. Here, then, it is the Citizen upon whom, not principally, but exclusively, the guilt, if any, lay, upon him that the responsibility fell.

War, indeed, at its best is so horrible, so lamentable, so loathsome, that every merciful and generous mind must eagerly welcome anything that is calculated to mitigate its severities and to alleviate its

horrors. Whether, however, such a device as the Geneva Convention, which purports to relieve an army of the care of its own wounded, and thus to set it by so much the more free to continue its wounding and slaughtering work; or such a device as the St. Petersburg Convention, which prohibits the use of an explosive bullet weighing less than nine-tenths of a pound (400 grammes), but allows its use if of any greater weight—whether these are real alleviations of war, or are not rather astute contrivances for other ends, has been doubted and may be doubtful. On the other hand, the military usages, which allow some methods of injury in war and forbid others, and which, so far as they forbid, are held to be merciful alleviations of warfare—these have always been shifting and variable, differing with the different spirit of different ages, tending always to condemn the new device of mechanical ingenuity and so to deprive of its advantage the nation most excelling in that ingenuity. Thus in the twelfth century the new cross-bow was condemned by the Church as an arm odious to God, while in the fifteenth century the musket was equally condemned for an unlawful weapon, so that even Bayard, the "chevalier sans peur et sans "reproche," ordered all musketeers who fell into his hands to be slain without mercy. In their modern form, these usages forbid the use of poison or of poisoned weapons, the mutilation of the dead, the maiming or killing of unarmed prisoners, and the slaughter of the wounded on the field of battle; but it must always be remembered that they forbid these acts only when they are unnecessary, and when they are consequently merely wanton barbarities; that the acts themselves are not prohibited when they are absolutely requisite for self-preservation; and that

the only judge whether they are requisite or not is the soldier who commits them. Thus the slaughter of the wounded—the most cruel of all—is permitted when the security of the victor is held by that victor to require it, and it was indeed carried out with probably greater completeness, and to a greater extent than was ever before known in modern times, no longer ago than at the battle of Omdurman in September, 1898. It appears, indeed, to be held that in war all acts are lawful, though all are not expedient; that the expediency of them depends mainly on the probability of retaliation in kind; and that of this expediency there can be no other judge than the perpetrator of the act himself. These attempts, therefore, to alleviate the horrors of war by military usage are as casual, ineffectual, and uncertain as they are incomplete and unsatisfying.

It would rather seem that any attempts to seek a mitigation of the horrors of war should be made in quite other directions than in those hitherto so lamely followed. Rather should ingenuity in the invention of new and more awful methods of destruction be encouraged than discouraged, rather should the use of all weapons be allowed without stint, and new and more deadly weapons added thereto. If, as may possibly be, we at last arrive at a point when a Chemist, innocent of gold lace and cock's feathers, but armed with formulæ, shall be capable of destroying armies off the face of the earth by simply mixing powders against them, that Chemist should rather be encouraged than discouraged; for war and the soldier's trade could hardly survive him, and the horrors of both would be mitigated to some purpose.

And meantime it would also seem that within the notions now current and the rules now agreed to, the

most powerful methods of alleviating the horrors of war will be such methods as will render the war most effective and therefore most short; such as will most effectually direct it, not so much at the Soldier and Sailor, who are but instruments, as at the Citizen, who is their creator, supporter, paymaster, inciter, and rewarder—not, indeed, at the Citizen's life, but at what touches him more nearly, his pocket; that war, in fine, should be directed at the material resources of the so-called non-combatant, that his prosperity should be impaired, his power of paying taxes diminished, and his patience and endurance so exhausted that he will be driven to hate the war and to sigh for peace. If this can be effected with the Citizen, the Soldier and the Sailor cannot and will not long survive as combatants in the war. If there are means whereby the Citizen—who is the real villain of the piece—can be reached in his pocket, without the Soldier or Sailor—who are the victims of the piece—being necessarily touched at all, then these means are, of all others, those that should be, those that must be preferentially adopted by just, merciful, and business-like warriors who would seek to attain the real supporters of the war, to injure them in the most effectual and least cruel manner, and thus to obtain that submission of their enemy which—which alone, and not slaughter, nor even "glory"—is the final end to be sought.

That such means exist, that they have been practised by Great Britain with success in the past and may again be so practised with equal success in the future, it is the purpose of this work to demonstrate, summarily, indeed, but, it is believed, successfully.

CHAPTER IV.

Warfare in Practice.

Warfare in its practice consists in doing as much material injury to the enemy as is necessary to reduce him to submission. It is effectual in proportion to the injury done to him. If no injury be done by it, it is absolutely ineffectual.

On land the injury is effected by invading the enemy's country, by capturing towns and cities, and occupying provinces, by seizing and destroying property whether public or private, by preventing even neutrals from carrying on trade in things not even contraband of war, by cutting off or appropriating the taxes, by thus depriving the Government of the enemy of the resources, whether of men, of *matériel*, or of money, on which it must rely for resistance, and by thus bringing it to that point of exhaustion when it will have no resource but submission. The destruction of men in battle is but a means to this end; for the object of war is not to depopulate a nation, but to reduce its Government to submission, and no victories in the field, no feats of arms, are of any avail whatever except in so far as they tend to bring about this result.

On the high seas there is no enemy's country to invade, there are no towns to capture, no provinces to occupy, and no possibility therefore of injuring the enemy by any of these methods. But there are Supplies to stop; there is property to capture,

property of the most valuable kind and in the most convenient form, and the capture of which is certain therefore to inflict a very serious material injury upon the enemy, and thus to diminish his resources for carrying on the war. Just as victories in the field are barren or even injurious to the victor if they produce no effect on the enemy's material resources, so also are naval victories barren or even injurious if they leave these unaffected. And as the material resources of the enemy on the high seas consist solely in the property that is found in course of transport thereon for his supply and succour, if this property be left to go free, no material injury whatever can there be inflicted upon him. The bombardment or capture of seaside fortresses and towns, or the disembarkation of troops, on an enemy's coast, is of course another matter; but this is not properly maritime warfare at all, but land warfare, proceeding by the same methods and having the same material results as the ordinary operations of that warfare.

A system of warfare on land, if any such could be conceived, which should affect the armies alone of the enemy, and which should at the same time leave his territory and property unaffected, would be absolutely ineffectual; and this is the case with any kind of maritime warfare that does not propose and include the capture of property at sea. Without this, the blockade of a port amounts to no more than the massing of troops on a frontier, a naval victory to nothing more than a barren boast, the supremacy of the seas to nothing more than a phrase, a vain exhibition of force incapable of being used to the injury of the enemy. But if property be captured then is the enemy invaded in reality, then the subject suffers, the taxes fail, the material resources are diminished,

the injury, in short, is inflicted, and the war is effectual.

That a nation at war has the right to seize its enemy's property, arising from and founded upon the state of war, has never been questioned. Yet there are those who would have this right altogether abandoned at sea, who claim that war shall exist between two nations on land but not for their merchants at sea; that requisitions of property, nay that the capture of whole towns and cities and the destruction of whole armies shall be lawful on one element, and that, nevertheless, every bale of goods shall be sacred on the other; who hold that private property is more sacred than private life, and that the money a subject pays in taxation is in some sense less his private property than the goods he sends to sea on an adventure.

Those who advocate this view argue that peaceable traders should not be prevented from carrying on their trade at any time; as though the trader over seas were in some way less a native of his own country and less bound to render it assistance and to bear its burdens in its extremity than the rest of his fellow-countrymen. They are not ashamed to claim that taxes shall be levied on the nation at large, that many thousands of its inhabitants shall be sent forth to give their lives in battle, and that the merchant alone shall nevertheless be neutralized and enabled to make even larger profits than in the time of peace he does, by the very event of the war. The merchant, however, is entitled to and can claim no better or other treatment than the rest of his countrymen. When his Government declares war he is at war together with all his fellows of the nation; and whatever be the individual sacrifices necessary for the

national success in the war, he is bound to make them as much as anybody else. And if it be true, that war can only be effectual at sea when it is directed to the seizure and confiscation of property, what shall we say of those who, professing to speak for "civilization," claim that their country should give up the power of capture from the enemy in order that they themselves may be protected from capture by the enemy?

If the merchant is to claim exemption from the war for his goods on the seas, every taxpayer may equally claim it for the money in his pocket; nay, the very soldier may claim it for his life. For the answer to each one of any such claimants is the same—that they belong to and owe aid to their country; that they must in its extremity make such sacrifices, each in his degree, as are necessary; and that the incidence of the war must be borne, whether it falls on the private goods of the merchant, on the private money of the taxpayer, or on the private life of the soldier. Each of them belongs to and forms part of the nation, and none of them can refuse to the nation the especial sacrifice which the necessities of the war may call for. If one must give his goods, the other his money, and the third his life, it is but in order that the goods, the money, and the lives of the rest of their fellow-citizens may be secured to them. Such sacrifices in such a cause no good citizen can refuse without abjuring his citizenship, and those who set up a claim to be personally at peace while they are nationally at war, do in effect claim to go out from their country and not to be of it.

If those who make this monstrous claim would or could abolish war altogether, it would be well; but until that is done, those who claim that a special

class of citizens should be specially exempted from the burdens of a war in which their country is engaged, perhaps for its very existence, must be held as preferring the personal profit of individuals to the common weal.

But the absurdity of this suggestion—for the common sense of mankind has hitherto prevented it from becoming anything more—that "private pro-"perty" should be "respected" at sea cannot be more strongly shown than by the light of the practice of warfare on land. The same principle of treatment applies to both, for it springs from and is built exclusively upon the existence of the declaration of war, the effect of which is to declare enemies the whole of the subjects of the enemy's nation, and all their property confiscate. It renders lawful, strictly speaking, the killing of all those subjects, and the capture of all their property, whether on land or on sea. In practice, indeed, there is far less hardship inflicted by capture at sea than on land. For at sea the property is more concentrated; it is found in cargoes necessarily of value; is the property of individuals necessarily possessing capital; is in charge necessarily of robust men, and is not immediately essential to the maintenance of their existence. On land matters are very different. Property there consists of the poor man's field and cattle, of his little store and his few utensils, even more often than of the broad lands and plentiful store of the rich; and those found in charge in time of war are often, if not generally, old men, women, and children. It is manifest, therefore, that in any case there is no possibility of inflicting so much hardship by seizing or capturing private property at sea as by occupying it or capturing it on land. Nevertheless it is suggested

that private property shall be respected at sea, while it is not respected on land. On land, indeed, war not only never has been, but never can be, made on the principle of respecting private property. For it is impossible to march an army without violating private property, without traversing private fields, forcibly occupying private houses, and forcibly appropriating private forage and provisions. Nay, no Government can make war at all except by taking its own subjects' private property in the shape of taxes. Wars are waged by taking private men from their homes, and making them fight public battles, and by taking private earnings from those who remain in order to support those who go forth. Battles are not fought by ministers, or even by Governments, but by private moneys and men, diverted, without any "respect" from private purposes to public uses; and since even the life of the soldier is his private life, it is apparent that there neither is nor can be any method whatever of reaching public property except through private, or of acting on Governments and Nations except through individuals.

Warfare, in short, can nowhere touch property in any way without touching the private man. And not only is it private property and private life which feed the war while it exists; it is also private property which pays the ransom when it is over. When a country is conquered, its Government is conquered, and therewith the control over all the private property in the country; and thus it was that, at the end of the Franco-German war, the means was acquired of drawing from France a ransom of two hundred millions, every *sou* of which was private property. This being so, it is apparent that no "private property" belonging to individual citizens

of a nation at war can claim or receive respect from their national enemy; and it is still more apparent that it cannot claim it at sea, where the hardship is least, since it never obtains it on land, where the hardship is greatest.[1]

But even those who suggest that "private property" at sea should be specially exempted, as none other is, from the effects of the war, do not deny that to subject it to those effects is an effectual method of making war. Neither has any Government ever been found to accept, still less to act upon, the proposition that property shall be exempt from capture. Reason indeed shows, and experience has proved, that unless property be made the primary object of maritime warfare, there can be no maritime warfare at all. The instances of the Crimean War and of the Franco-Prussian War, which were carried on upon the principle of *not* making it an object, are sufficient to prove this. The reason is plain. War on land cannot be declined. It must and can only come in the form of an armed invasion of territory, which cannot but be resisted, for not to resist this is to accept national extinction. But if "private property" be held sacred, and public vessels alone be regarded as proper objects for the exercise of the rights of war, war at sea may be declined. Any Power fighting with another and conscious of naval inferiority may, as Russia did in 1854, and as Prussia did in 1870, sink or keep its vessels safely in its ports, under the guns of forts, behind torpedoes, and out of the reach of any but a land force. The greater the inferiority, the greater of course is the

[1] President Jefferson shows that the burden of war must always fall at last on "the persons and property of individuals." —*See* p. 97.

determination not to risk an encounter. This, it may be said, goes to prove that all naval warfare is impossible except between two States equal in maritime power, and that it is especially impossible for any State which, like Great Britain, is likely to be superior in line-of-battle ships to any other nation. And this, indeed, is largely true, unless there exist means of forcing the enemy to come out and fight; this has been true in the cases quoted because those means were not employed. For they do exist, and they consist simply in laying hands upon such property of the enemy as may be found afloat.

Then indeed there is a reason, and an imperative reason, for the adventure to sea even of an inferior naval force, for then it becomes a question of SUPPLIES and money—a question, in other words, of retaining the power to carry on war in any form. Then the naval supremacy of a State amounts to something, for it amounts to the power of stopping Supplies to the enemy from the whole world beyond sea, while at the same time it provides supplies for the State itself, under the sure protection of its superiority at sea; or if the supremacy be doubted or denied, it forces the enemy to come out and to fight in the defence of his sinews of war, and makes maritime war a reality indeed.

But now if private property be exempted on the seas from the incidence of the general confiscation pronounced by the declaration of war against all the property of the enemy, what remains of maritime warfare? The object of cruising vanishes, for there is nothing to cruise for that can be touched when it is found. The utility of the right of blockade, together with the object of cruising, equally vanishes, for the whole and sole object of blockade

is to prevent the enemy from receiving through the blockaded ports that assistance which he derives from the introduction into and the issue from them of "private property." The power of intercepting even contraband of war vanishes also, for the contraband of war is private property, and cannot be touched. The power, indeed, of landing expeditions on an enemy's coast is retained, but this is not maritime warfare, it is merely the transport of forces for land warfare. Of maritime warfare, properly so called, there remains, indeed, nothing whatever beyond and excepting the possibility of engagements between fleets. But this is precisely the form of conflict which the weaker Power, as is evident, and as Russia and Prussia have already proved in fact, will carefully avoid. There is no commerce to protect, no blockades to raise, "private property" is inviolable, and the commerce, which is so valuable and so necessary that every effort must be made to protect it, requires no effort at all, since it protects itself. There is nothing to fight for except glory, and no reasonable prospect of gaining any glory by fighting, but quite the reverse.

No naval commander not insane would risk a conflict under such circumstances in so utter an absence of any object, and he would keep fast in port viewing with compassion rather than respect his stronger enemy, who might scour the seas declaring that he ruled them, but could neither do any injury nor produce any effect whatever upon the issue of the war. The effect of all which must be that the stronger a nation is at sea, the less opportunity would it have of putting forth its strength, and that the larger its fleet, the more probable would it be that that fleet would be reduced to the most helpless and utter

inaction. In short, to affect to wage war at sea without capturing property is to wage no war at all, and to make of the strongest fleet the least effectual arm —for the stronger it proved and was known to be the less possibility would be afforded to it of using its strength.

Of what avail can it be that the flag of any State is found in every sea all over the world with no other to challenge it, if from every sea all over the world the enemy of that State is nevertheless allowed freely to draw supplies with which to carry on the war? Of what avail is it to possess a navy that finds no adversaries? Of what avail to make war at sea at all unless by it an injury is inflicted upon the adversary?

The question is answered as soon as stated.

No publicist or statesman who has ever seriously considered what war is, has ever been so foolish as to propose that property either public or private should be exempt at sea any more than on land from the effects of the war. It always has been, it still is universally admitted that in war the property of a belligerent is liable to capture at sea by the other belligerent, and those alone have questioned it who assume to condemn war altogether, and who thus stand altogether outside of the question, which is how war is to be carried on assuming that it exists.

CHAPTER V.

Capture at Sea the most Effectual and Merciful Method of War.

The exercise of the right of seizure and confiscation, whether by State vessels, or commissioned private vessels, while it is the most effectual, is also the mildest and least cruel of all methods of making war.

That to capture property is a more effectual means of injuring the enemy than to destroy life, has already been shown as fully as it is necessary to show what is self-evident. It remains here to consider whether this method of warfare is, in its nature, worse or better, less or more humane than any of the other methods known, practised and admitted.

There are those who declare that to capture property is more barbarous and less honourable than to cut throats; they assert that it is more degrading to subjects of a warring State to be induced by the motives of personal profit to capture prize, than to be induced by the motive of personal advancement to shed blood. They do not propose or advise that the hope of extra pay and promotion shall be withdrawn from among the inducements to the officers and men of the army and navy; but they say that the inducement of prize-money is in some way more immoral and less honourable. And what is remarkable is that the same persons who hold this

language, entirely change their tone, when they come to speak of the merchant, in whose interest, short-sightedly viewed and ill understood, they raise their contention. It is not lawful, they assert, for any soldier or sailor or any volunteer to be moved by the hope of gain; even though it should be a gain in which his country participates; but it is lawful for the merchant to be moved by that hope, nay to be moved by that alone, even if its realization be fraught with disaster to his country. The soldier, the sailor and the volunteer must fight, they say, without any consideration of private gain; but the merchant must trade upon this consideration alone; nay more than that, he has a right to claim any sacrifice on the part of his country which will enable him to continue his trade at all times. It is, nevertheless, manifest that if it is right to reward one who fights for the State, out of taxes taken from his countrymen, it cannot be wrong to reward another out of prizes taken from his countrymen's enemies, and that it is not less honourable to receive prize-money for destroying the enemy's resources in goods, than it is to receive a title or a riband for destroying his resources in men. Nay, since the first object is to weaken the foe, and thus to cause the war to be brought successfully to an end, and since, therefore, he is best entitled to reward by his country who most powerfully contributes to this end, the greatest rewards and the highest honours should be reserved, not for those who kill most men, and thereby inflict a comparatively slight injury on the enemy; but rather for those who capture property, and thereby at once inflict a great injury upon him, and also add to the resources of their own country.

It has, however, been freely alleged that this

method of making war is more barbarous and brutal than all others. Those others be it remembered consist in the destruction of human life, while this is solely concerned with property; which alone is a sufficient answer to such an argument. But from the declamatory denunciation of the capture of property at sea, it is apparent that the methods by which alone that capture can lawfully be effected, are either unknown or are intentionally concealed. For which reason it seems expedient here to set forth what the procedure is, whether for State vessels or Privateers.

The cruiser if he comes across a vessel he suspects to have enemy's goods on board, requests her to lay to, and sends a boat on board with an officer whose duty it is to examine the vessel's papers. If there appears from these reasonable and probable cause to believe that the vessel itself is the property of the enemy, or that there is contraband of war or enemy's property in the cargo, the captain of the cruiser on his responsibility and at his risk, puts a prize crew on board, and takes the vessel into port.[1] He may not break bulk, nor touch or embezzle an article on board the vessel under pain of forfeiting his whole share in the prize, together with treble the value of the articles embezzled.[2] He may not injure a person on board, he may not even ransom the prize and set it at liberty, but must bring it into port for adjudication.[3] Once there, the vessel is delivered over to the Prize Court, which proceeds to decide whether the capture is good prize or not;

[1] This, of course, refers to the procedure that would be followed by any Power that does not adhere to the Declaration of Paris.

[2] 55 Geo. III. cap. 160, s. 56.

[3] *Idem*, s. 12.

and if not, the captor is liable, and is condemned; to pay costs and adequate damages for his interference with the vessel.[1] There is in short no warlike act which is so fenced about with conditions and with securities as this, none in which the voice of the dispassionate judge is heard as it is in this, none in which injury to the innocent is so guarded against, none in which the excesses of the strong and the violent are so precluded. In other operations of warfare, such as battles ashore or on the seas, the whole black array of human passions are let loose and encouraged to do their worst; in this they are restrained by the most rigid rules, and forced to submit themselves to the judgment and approval of a calm and orderly tribunal, before which if any man has wrought violence or inflicted injury he has to answer it.

The seizure of property on land in time of war is subject to no such rules. Any military commander who chooses to declare it necessary, may on land seize any property he may please to designate, without any form of trial or judgment whatever. He has no Prize Court to face; no Law of Nations to obey, nothing but his own will.[2] And though it is

[1] *See* Lord Stowell's letter of 10th Sept., 1794, as to procedure, in Robinson's *Admiralty Reports*, American edition. "Agreeing to share prize-money (in 1799) involved sharing "the bad as well as the good fortune of the captors. Enemy's "property in neutral bottoms could not always be proved, and "where proof failed the captors were liable to demurrage and "very heavy costs."—*The Life of Sir W. Parker, Admiral of the Fleet.* London, 1876, p. 127.

[2] "Did the Professor never hear of the sack and pillage of "towns, and the murder of innocent persons, in a storm? Did "he never hear of the ravage of the Palatinate, where hundreds "of harmless cottages were laid smoking in ruins by the most "accomplished and most humane prince of his time, reduced, by "the inferiority of his numbers, to waste a whole country, in

true that he is answerable for his acts, *after* they have been done, to his military superiors, that is a very different thing from being, as the naval captor is, answerable *before* the act is done, to an independent court.

It is clear then, that the capture of property at sea is of all methods of warfare the least cruel and

"order to prevent the irruption of the enemy? According to "the accounts of historians, in the act of blaming him, all the evil "that he did appeared to be necessary, and, if he sacrificed the "principles of humanity, it was to the duties of a general and "the rules of war.[1] In later times, has the Professor never "heard of instructions from a French minister, in the same "spirit, to make a downright desert in Westphalia, as a mere "plan of defence?"[2]

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[1] Voltaire, *Siècle de Louis XIV. Mod. Un. Hist.*, 21,392.

[2] *See* the Instructions from Belleisle to Contades, taken amongst the latter's papers after the battle of Minden. These are some of the extracts:—"After observing the formalities due "to the magistrates of Cologne, you must seize on their great "artillery by force, telling them that you do so for their own "defence."—"You must destroy every thing which you cannot "consume, so as to make a downright desert of Westphalia."—"Though the Prince of Waldeck is outwardly neutral, he is very "ill-disposed, and deserves very little favour. You ought, "therefore, to make no scruple of taking all you find in that "territory: but that must be done in an orderly manner, giving "receipts, etc., etc. Zippe and Paderborn are the most plentiful; "*therefore they must be eaten to the roots.*" The French defended this upon the legality of wasting a country in order to cut off subsistence to the enemy (*Ann. Reg.*, 1759). Again, observe the orders of Broglio, when conqueror in Hanover, to the civil and *unarmed* inhabitants. "Whereas many civil officers and prin-"cipal inhabitants of Brunswick and Hanover have withdrawn "themselves, etc., they are ordered to remain in their houses, "with their cattle, *upon pain of having their houses pillaged, and "levelled with the ground, and themselves punished according to "the exigency of the case*" (*Ann. Reg.*, 1761). Severe as all this appears, it is, perhaps, not indefensible by the laws of war.

the least liable to abuse. Moreover it is the only method by which any action can be brought to bear at sea upon the enemy's resources. On land a belligerent may capture territory, and thereby acquiring the absolute dominion over it, may dispose as he pleases of the inhabitants and of their property. At sea he cannot capture territory, but the right to capture property is only therefore the more clear.

Either the state of warfare gives the right to capture property at sea, or it gives none to capture both territory and property on land. From this dilemma there is no escape, and those who maintain that property at sea should be exempted from the incidents of the war, must extend the same principle to property ashore, and must declare, not only against the requisition or destruction of food, forage, houses, horses, and other property required by armies, and always taken by them when required, if found; but also against the invasion of territory, the bombardment or siege of towns, the levying of contributions, and generally against any interference whatever with trade and property. In other words, they must denounce war altogether; but at any rate those who recognize that war, with its incidents, is sometimes indispensable on land, must recognize that it is sometimes necessary with its incidents at sea.

There seems to be, however, in some minds so

But even if they are not, as Schlegel observes upon the *fact* of superior continental regularity, they are proofs in full of the easy rashness with which a visionary assertion is made.—Page 27, *A Treatise of the Relative Rights and Duties of Belligerent and Neutral Powers in Maritime Affairs*, by Robert Ward, Esq., Barrister-at-Law, in 1801. (Reprinted from the original edition by Lord Stanley of Alderley, 1875.)

great a desire to limit to the firm land all the operations and incidents of warfare, that they do not hesitate to declare, not merely against the right of capture of enemy's goods, but even against the Right of Search upon which alone all knowledge of a vessel, of her nationality and character must be based. They declare that the mere act of boarding a merchant vessel, and of examining its papers, and if cause appear, its crew and cargo, is an infraction of the sovereignty, and a violation of the territory of the nation to which the vessel belongs; and a writer on the law of nations[1] has even been found to lend the inadequate authority of his name to a pretension condemned by all other publicists without exception. Nevertheless the right of visitation and search is assuredly one of the mildest and the least susceptible of abuse that can be exercised. Its object is to verify the nationality and the neutrality of the vessel visited, and to establish the innocent nature of its voyage. The exercise of this right is a necessary consequence and corollary of any other belligerent right whatever. On land the limits of territory are known and apparent, and its character is established by its situation; but this is not the case with a vessel on the high seas. She may hoist false colours, or she may have false papers, practices which indeed have always been common in all wars. The belligerent man-of-war therefore must needs have, and has, the right to assure himself that the vessel he meets is truly a neutral, and that her cargo is of an innocent nature, having an innocent destination. The method of assurance is settled to the merest detail by the law and the practice of nations. In the first place the

[1] De Rayneval, *De la Liberté des Mers*, t. 1, cap. xvi.

man-of-war hoists her colours and fires the "affirming "gun," which is equivalent to a declaration on honour that the colours are truly those of her sovereign. Thereupon the merchant vessel in view of which the colours are hoisted and thus affirmed, is bound in turn to proclaim her nationality by displaying the flag under which she navigates. This may be, and may be deemed sufficient—but if not, the man-of-war lowers a boat with an armed crew, and sends it away under the command of an officer, who, on boarding the merchantman, forthwith proceeds to examine the ship's papers, and, if necessary, to question the captain and crew. If it should clearly appear from the inquiry that the vessel and cargo are *bonâ fide* neutral property, and that there is on board no contraband of war destined for an enemy—or if only it should not appear that there is any good cause to suspect the contrary—then (according to present practice) the merchantman is allowed to proceed. If on the other hand it would seem that the vessel is enemy's property, or that, being neutral, she is engaged in conveying contraband of war, or in traffic of an otherwise unlawful nature, the captain of the man-of-war may seize her and take her into port for trial and judgment by the Prize Court—always at his own risk, and with the certainty, if he fails to prove his case, of having to pay costs and damages.

It would seem to require little argument to show that the right of visitation and search is one which cannot reasonably be so much as questioned; it requires none to show that it can by no means be abandoned. By it alone can the flag be verified, by it alone can the carrying to the enemy of contraband of war be prevented, by it alone can any safeguard be

afforded against the many frauds and deceptions which have in all wars been common, and which the very situation invites. The right is undoubted, the exercise of it is necessarily mild and moderate in character, and it amounts to nothing more in the world than affording an opportunity of proving the alleged character. It may be odious to those who wish to evade the duties of neutrality; but to the honest neutral it will hardly be so much as inconvenient.[1]

It has also been often declared that the visit, seizure, and despatch to port for judgment of unarmed merchantmen by armed vessels of war or privateers, was, when it was practised, accompanied by many grievous abuses; that Privateers especially were occasionally guilty of great barbarities and of acts of lawless violence towards the crews captured, and that they habitually destroyed or altered the papers, embezzled the cargo of, and fraudulently gave an inimical colour and character to, all vessels that fell into their hands.

Upon this it is to be remarked that the assertion thus made is entirely unsupported by proof, and that, on the contrary, the records of the Admiralty Courts show that, as a rule, the seizure and bringing in were effected regularly and without violence—generally, indeed, without any resistance—whether by King's ships or by privateers.[2] The same records also show that it was extremely difficult for the captor to conceal any irregularity which it was the interest of the captured to disclose, and that wherever misconduct was shown, punishment promptly followed.

[1] *See* Lord Stowell's judgment on the "Maria" (Robinson, 340).

[2] *See* Robinson's *Admiralty Reports, passim.*

But now, even if it were true—which it is not—that the capture of property was often accompanied by abuses, that would indeed be a good reason for devising methods to suppress those abuses, but it neither would nor can furnish ground for attacking the right on which those abuses might have been engrafted. And here again, that which has already been said must be repeated—that *the capture and confiscation of property at sea is the one operation of warfare which is subject to calm, unimpassioned judicial decision before the act itself is completed;* and that therefore, if it be liable to abuse, it is at any rate of all acts of warfare that in which the abuse is most certain to be detected, and due reparation most certain to be made.

Much has been said, though little has been proved, of the abuses to which the capture of property leads. It is alleged that the practice of this kind of warfare renders naval officers and men greedy of gain, and that it induces them to neglect enterprises of mere fighting in order to engage in those which promise prize-money. If this were so it would be in every way a gain. It would be a gain to humanity that the operations of war should be diverted from men's bodies to their goods; it would be a gain to the belligerent which would at once enrich itself and distress its enemy; and it would be a gain to the officers and seamen who would thus be rewarded for their toils by the enemy himself instead of becoming chargeable for increased pay and pension on their own countrymen.

But it is not true that the pursuit of prize has ever been sufficiently powerful a motive to draw officers and men away from duties in which hard knocks alone were to be given and received. It is so little true that all the great naval actions that have been

fought have been fought by sailors trained and practised to their trade in the pursuit of Prize.[1] For indeed this is the very pursuit that makes keen sailors; this was the very pursuit which during the wars of the last and the beginning of the present century enabled English Commanders to make excellent seamen out of the sweepings of gaols and the rakings of the shore, brought on board by the press-gang in a frame of mind which would rather have induced them to fight against than for their country. And more than this, it is perhaps the one only inducement that will suffice continuously to draw sailors into the arduous service of a navy in time of war, that will keep them in it, or that will make them fight with any heart or spirit. Even ashore it is found necessary to offer to the soldier the allurements of booty as well as the prospect of increased pay and promotion; how much more then is it necessary to allow Prize to the sailor, whose life is always in his hand, and who has to contend with the elements as well as to do battle with the enemy. Yet without the capture of property there can be no Prize, and without Prize there can hardly be sailors of the stamp of those who fought under Hawke and Nelson, Howe, Rodney and Dundonald.[2]

[1] Between November, 1802, and November, 1811, nine years in all, Sir William Parker captured, as captain of the "Amazon," no less than sixty vessels, which produced to him as his own personal share of prize-money the sum of £35,211 11*s.* 3*d.*—*Life of Sir W. Parker. Appendix.*

[2] "I have seen it openly proclaimed that seamen will fight "for fighting's sake, and without expectation of reward. If the "propounders of such an opinion were to ask themselves the "question whether they engage in professional or commercial "pursuits from mere patriotism, and without hope of further "remuneration, then their reply would show them the fallacy

" of ascribing to seamen a want of those motives which impel " all men to adventure and exertion. The result of my own " experience is that seamen fight from two leading motives:— " 1st, Prize-money. 2nd, From a well-grounded belief in their " own disciplinary experience, which refuses to be beaten, and is " not satisfied with less than conquest. Take away the first " motive and we may find difficulty on an emergency in getting " men to accomplish the second."—*Lord Dundonald's Auto-biography*, vol. i., p. 54.

CHAPTER VI.

The Sea the only Road for Trade.

The land divides the peoples of the earth; the sea unites them. Though the sea has always been regarded with fear if not with horror by the greater number of mankind, and though most men remain of Horace's opinion that he must have had a breast encircled by oak and triple brass who first dared to fit out and launch a ship, yet it remains historically true that the first intercommunications between nation and nation were by water; that human effort has always most successfully followed the coast-line; that where the sea reaches, there human activity is always most to be found; and that where the sea reaches not, there all communication with the rest of the world comes least and last of all. Thus, while the whole coast of Africa and those parts adjacent thereto have been known and traded with for centuries, it is but yesterday that any communication has been set up with, or so much as any knowledge gained of, the interior of that vast peninsular continent by the outside world; and the same may be said of those parts of Asia, and even of Europe, which are most remote from the sea. Nor are things likely ever to alter in this respect (unless, indeed, some means be discovered of navigating the airs as freely as we now navigate the seas), for the impediments in the way of free communication by land are

such as must otherwise for ever prevent it from competing on equal terms with the sea. On land a mountain, a morass, a river, a forest, a climate, or even so apparently insignificant a creature as a fly—such as the tsetse—has been and still is found to be an insurmountable obstacle to intercommunication, so that populations between whom such an obstacle intervenes, although living within a short distance of each other, are practically as much separated as though a hemisphere divided them. No such obstacles exist on the seas, which (except for the entirely insignificant case of the few ports in the northern hemisphere closed in the winter by ice) afford an ever open road from every point on their shores to every other point, however remote. And, as this road is, of all, the least interrupted of any, so also is it the easiest, the cheapest, and, on the whole, the safest of all, while every day tends to make it safer, and its use more certain. Storm and tempest, ten times greater than any that Horace ever knew, are now held of so little account that they scarce affect by a few hours an Atlantic passage of 3,000 miles; even the greater danger of fog is scarcely regarded; and the greatest danger of all—the land—is on all the great ocean highways so marked and guarded by light, beacon, and buoy, as to have lost most of its dangers whether by day or by night. If, indeed, we regard the marvellous passenger-service which has grown up between North America and Europe, and consider the safety, certainty, and exactitude with which the great liners in that service make their passages, in summer and winter, through fine weather and foul, scarcely varying a few hours in a passage now reduced to a little over six days, whether they meet storm or calm, we should be brought near to

the belief that the marine engineer and the marine constructor have, between them, almost abolished the dangers of the seas. The improvements, moreover, which have been accumulated during the last thirty years are so vast, and have recently succeeded each other with so much rapidity, that we may reasonably expect them to be followed by others even more important, and tending still more to increase the certainty, safety, and rapidity of sea-transit.

The extent to which the trade between the various nations of the world is carried on by sea, is perhaps hardly suspected by many. Nor is it easy to come at the figures; for although the useful statistical abstracts published by the Board of Trade give the total imports and exports respectively of each country, and give also, on a different and distant page, the percentage of each that is carried by sea, yet the figures resulting from those percentages are not worked out.

In order, therefore, to arrive at as near an approximation as might be to the exact proportion of the trade between the nations of the earth which is carried by sea, as compared with the proportion carried by land, I have been at some pains to collate certain tables of statistics published by the Board of Trade, and to work out the figures which would result from the percentages given in those tables. The result of my labours is embodied in the following table.

TABLE (A) SHOWING THE VALUE OF THE IMPORTS AND EXPORTS CARRIED RESPECTIVELY BY SEA AND BY LAND OF THE TEN PRINCIPAL TRADING COUNTRIES OF THE WORLD, FOR THE YEAR 1896.

See Statistical Abstract of the Principal and other Foreign Countries, 1886 to 1895-6 (C. 8881 of the year 1898), pp. 44 to 47, and 200 to 201, and the Foreign Office Report, C. 8649 of 1898, pp. 3 and 9.

Country.	Year.	Imports. £	Prop'rtion by Sea per cent.	Exports. £	Prop'rtion by Sea per cent.	Total Trade. £	Prop'rtion by Sea per cent.	
RUSSIA (including Finland)	1896	65,885,000		75,253,000		*141,238,000*		"Special" only.
By Sea		*38,081,530*	57·8	*53,805,895*	71·5	*91,887,425*	*65·0*	
GERMAN EMPIRE	1896	231,895,000		195,660,000		*427,555,000*		Exclusive of through transit trade.
By Sea		*150,731,750*	65·0	*127,179,000*	65·0	*277,910,750*	65·0	Foreign Office Report, C. 8649 of 1898, pp. 3 and 9.
HOLLAND	1896	135,715,000		111,389,000		*247,104,000*		"Special" only.
By Sea		*64,195,195*	47·3	*17,710,851*	15·9	*81,904,046*	*33·1*	
BELGIUM	1896	121,495,000		108,812,000		*230,307,000*		
By Sea		*57,831,620*	47·6	*50,815,204*	46·7	*108,646,824*	*47·1*	
FRANCE	1896	197,152,000		183,744,000		*380,896,000*		
By Sea		*139,189,312*	70·6	*125,497,152*	68·3	*264,686,464*	*69·5*	
SWITZERLAND	1896	60,284,000	0	47,369,000	0	*107,653,000*	0	By land only.
ITALY	1896	50,936,000		46,090,000		97,026,000		
By Sea		*33,566,734*	65·9	*22,538,010*	48·9	*56,094,744*	*57·8*	
AUSTRO-HUNGARY ...	1896	58,816,000		64,500,000		*123,316,000*		"Special" only.
By Sea		*11,645,568*	19·8	*8,127,000*	12·6	*19,772,568*	*16·0*	
UNITED STATES	1896	162,443,000		183,876,000		*346,319,000*		
By Sea		*154,960,622*	95·4	*171,188,556*	93·1	*326,149,178*	*94·2*	
UNITED KINGDOM ...	1896	*441,809,000*		*296,379,000*		*738,188,000*		By sea only.
TOTAL		*1,526,430,000*		*1,313,072,000*		*2,839,502,000*		For 10 principal countries.
By Sea		*1,092,009,331*	*71·5*	*873,240,668*	*66·5*	*1,965,249,999*	*69·2*	
Other Countries	1896	*259,472,000*		*243,335,000*		*502,807,000*		In some cases these figures are for 1893 or 1894.
Trade (approximate) of all countries enumerated ...	1896	*1,785,902,000*		*1,556,407,000*		*3,342,309,000*		

This table cannot be regarded as exactly accurate for several reasons. In the first place, while all the figures therein printed in roman characters are taken as they stand from the official returns, those figures which are printed in italics are my own, worked out, as examination of the table will show, from the official totals and percentages; and, in this working out, there may be mistakes.

It is also to be remarked that while in most instances the figures are given for the general imports and exports, yet in some instances they are only given (because only obtainable) for "special" imports and exports—that is, for imports for home consumption alone, and exports of domestic produce alone.

Moreover, there is a latent inexactitude in these figures on account of the different treatment by different countries of imports and exports of bullion.

It seems possible, too, that there may be other inexactitudes in the official figures themselves; for they come from all countries in all shapes; and they are certainly incomplete, since they give no account of trade of the numerous colonies of the various countries.

Finally (though even this does not exhaust the list of reservations that should strictly be made), it is to be remembered that every import begins by being an export, and that every export ends by becoming an import; so that if we had here the figures for the whole trade of all the countries in the world, the total of imports alone, or of exports alone, would represent the whole value of the goods exchanged or "traded." But we have not here the whole of the figures for the whole trade; neither have we the freight, which would probably go far towards making

up the difference of over two hundred millions between the value of the total imports of the ten principal countries and the value of their total exports. But it will be seen that, if the imports alone of the ten countries be taken, the proportion carried by sea is 71·5 per cent.; that if the exports alone be taken, the proportion is 66·5 per cent.; and that, if imports and exports be taken together, the proportion is 69·2 per cent. So that the extreme difference is 5 per cent. at the outside, which does not appreciably affect the conclusion.

It seems, therefore, that while it must be remembered that the figures are neither absolutely exact nor absolutely complete, yet that this table may be accepted as giving as near an approximation to as full and accurate an account of the world's trade between nations as is at present attainable; and as giving, at any rate, a very fair approximation to an accurate account of the proportion thereof carried on by sea.

Here, then, are disclosed some very important facts:

I. That the whole trade between all the (enumerated) nations of the world amounted in 1896 (approximately) to £3,342,309,000.

II. That, of this trade, that which was carried on by the ten principal nations named, amounted to £2,839,502,000.

III. That of this last-named trade, as much as £1,965,249,999 represents trade carried on by sea.

IV. That the trade carried on by sea was from 66·5 to 71·5 per cent. of the whole.

V. In short, two-thirds in value of the trade was carried on by sea, and only one-third by land.

But there is more than this.

It has not infrequently been alleged that, although

the sea is an admirable, and must always be a useful road for trade, yet that, for countries having a considerable land frontier, and which march with trading neighbours, the tendency of modern times must be rather for land-carriage to supersede sea-carriage. It is pointed out by those who hold this view—and with perfect truth—that ceaseless and most successful efforts are now made by every trading country, to improve its means of communication with its neighbours, not alone by the improvement of roads but also, and much more, by the building of railways; and it is suggested that the enormous increase in railways and the lowering of their rates of freight must have had, have had, and are having, as their necessary result, the carriage by land of much that was formerly carried by sea, and, to that extent, a consequent diminution in the proportion of sea-trade as compared with land-trade.

Nevertheless, the very contrary appears to be the fact. The trade by land has, no doubt, very greatly increased, owing to the circumstances cited; but simultaneously with that, the trade by sea has increased even more greatly. So that it would rather seem that the more land-carriage increases, still the more does it lag behind sea-carriage, and still the more shows that the sea is destined to be in the future, as it has been in the past, the one great main road for all trade.

This conclusion seems to be fairly deducible from the figures given on pp. 200 and 201 of the Board of Trade Statistical Abstract for the Principal and other Foreign Countries, 1886 to 1895-6 (C. 8881 of 1898). The following table of extracts therefrom shows the variation in the proportion of sea-borne to land-borne trade between the years 1884 and 1896 for each of

the ten countries which figure in the preceding table that possesses both a land and a sea frontier and in which alone therefore a variation is possible.

It will be seen that in every case except that of Russia, Holland, Austria, and the United States, the proportion of sea-borne to land-borne trade has materially increased since 1884, and that only in the two cases of Austria and the United States has it diminished both in imports and in exports. But the diminutions are small, while the increases are great, and are especially great and remarkable in the cases of the two most important trading nations of Europe —France and Germany. The table, at any rate, suffices to show that the proportion of sea-borne as compared with land-borne trade has, during the twelve years in question, materially increased all round; and that, up to the most recent dates, the Ship has continued to hold its own, and something more, with the Road and the Railway.

TABLE (B) SHOWING THE VARIATION IN THE PERCENTAGE OF SEA-BORNE AS COMPARED WITH LAND-BORNE TRADE BETWEEN 1884 AND 1896, FOR THE EIGHT COUNTRIES ENUMERATED.

	Imports. Percentage by Sea.		Exports. Percentage by Sea.		Increase or Decrease of Percentage of seaborne trade in 12 years.	
	1884	1896	1884	1896	In Imports.	In Exports.
RUSSIA IN EUROPE	56·8	57·8	72·4	71·5	+ 1·0	— 0·9
FRANCE	65·3	70·6	66·7	68·3	+ 5·6	+ 1·6
ITALY	59·2	65·9	46·3	48·9	+ 6·7	+ 3·6
GERMANY	35·6	65·0	36·6	65·0	+ 29·4	+ 28·4[1]
HOLLAND	38·2	47·6	19·3	15·9	+ 9·4	— 9·4[2]
BELGIUM	45·3	47·6	35·4	46·7	+ 2·3	+ 11·3
AUSTRO-HUNGARY	20·9	19·8	19·8	12·6	— 1·1	— 7·2
UNITED STATES	96·2	95·4	96·6	93·1	— 0·8	— 3·5

The effect of Tables A and B seems to be con-

[1] See Foreign Office paper, C. 8649 of 1898.

[2] These percentages (for Germany and Holland) are based on quantities, not on values.

clusive. They establish beyond all doubt or question that the great mass of the world's trade is carried on by sea, and that the proportion of the trade so carried on tends, in spite of the great improvements in land communication, rather to increase than to diminish.

At this time of day it can scarcely be necessary to point out or to insist upon the truth, now universally recognized, that of all sources of national wealth Trade is the greatest. Trade is carried on for profit alone, and for no other reason whatever. Its very existence suffices to prove that it brings a profit to both sides engaged in it—for otherwise it would not exist—as its increase suffices to prove an increased accumulation of those profits, or, in other words, of wealth. As a source of wealth, Trade is generally more fruitful than either Agriculture or Manufactures, for these, unless supplemented by, and existing as feeders of, Trade, may, and often do, produce either small profit or no profit at all; whereas, as already remarked, Trade, so long as it exists, invariably produces a double profit—one for each of the parties engaged therein.

Trade, moreover, is necessary to every nation. There is none that can live wholly alone, remain dependent wholly upon what it can produce within its own four corners, and for ever go without some things at least that are produced by other countries. The first sign of emergence from savagery is intercourse with other nations; and as the emergence is more complete, so do wants grow and increase, the objects of Trade become more numerous, the sufferings and inconveniences caused by any interruption of Trade greater and more general.

Trade, therefore, has always been the principal object of the most enlightened statesmen, its practice

the favourite pursuit of the most intelligent nations—its possession and security the greatest prize that can be obtained by any people. For as trade increases so does wealth increase, and wealth, which has always been the chief, may now be said to be the sole measure of material power, since there is no form of that power which cannot readily be had in exchange for it. The result is that, so soon as nations began to reflect and to reason upon, and, as a consequence, to provide for, their own interests in competition with the interests of other nations, those of them who have any intelligence have always addressed themselves to the development of their own trade, to the capture of the trade of others, and too often to the attempt to gain for themselves a monopoly of all trade. It is from the struggle for trade that all the great conflicts between nations in modern times have arisen. The Renaissance, not improperly so-called, of moral, material, and intellectual activity, which succeeded the darkness of the Middle Ages, nowhere showed itself so markedly as in a renascence of trade; and if we take England alone—though it would be equally true of other nations—it will be found that, although the many bloody and costly wars she waged from that time downwards often appeared upon the surface to have as their motive personal, dynastic, or political considerations, strictly so-called, yet, if their real origin be traced, it will always appear that they were wars either to gain a new trade or to maintain and develop a trade already enjoyed. Nor is it less true in the present day—indeed, it is notoriously far more true—that although some of the most desperate, and, it may be added, some of the most injurious wars of our own times have been fought, not with the sword, but with the tariff, the conflict is not less but rather

more real and more serious, and often far more fraught with mischief; to which may be added that, as in the wars with the sword, the combatants have often blundered, erred in their conduct, mistaken their own true object and thus inflicted occasionally more damage upon themselves than upon their enemy, so in the modern wars of the tariff the mischief which is intended to be done to the opponent often falls in its greatest intensity upon the doer.

Since, then, Trade is of such overweening importance to all nations which are so happily situated by Nature, and whose people are so happily gifted with qualities as to be able to pursue it successfully; and since, as has been shown, trade must in the main be carried on by sea, it seems to follow, as a matter of necessity, that whether in peace or in war, that nation must be foremost, predominant, and powerful beyond all others whose power is on the sea, and whose position is therefore such as to enable it to act with the greatest stress upon the great roads of Trade, whether in defence of its own commerce or in offence against the commerce of its enemy.

In Peace as in War, the important consideration for a Nation is its Supplies. In peace a prosperous nation secures them in ample variety and ample quantity, but always with the greater completeness and facility in proportion to its greater command of and access to the Sea-Roads given to it by its geographical position and its practice of seafaring.

In War it is an elementary axiom that to obtain and to retain the command of the enemy's channels of Supply is to acquire over him a superiority for which neither numbers nor valour, nor any other thing whatever will compensate.

And now, since it has been shown that Trade, the

source of Supplies, is in general mainly and increasingly carried on by Sea, it seems undoubtedly to follow as a necessary corollary to the strategic axiom just quoted, that a nation which possesses supremacy at sea, and the consequent power to stop at sea the enemy's Supplies, must have an enormous advantage over all others which lack that power. Neither has experience failed to prove that this is indeed the case.

CHAPTER VII.

Capture of Enemy's Property in Neutral Vessels.

The law of nations allows war for the resistance of aggression and the prosecution of a right, at sea as well as on land, and it consequently must and does allow the effectual prosecution of that war by the infliction of injury on the enemy through the capture of his property. For it allows the destruction of life and cannot therefore but allow the capture of property. If it allows the taking of life it must allow the taking of property. Nor has there ever been, nor is there any dispute that it does allow this.

But the point to be observed is this—that unless a belligerent may take his enemy's property out of neutral as well as hostile vessels, he is practically debarred from taking it at all; since his enemy can, and for the sake of avoiding risk undoubtedly will, ship his goods under the neutral flag so long as the war lasts. When this is remembered the importance of the point becomes at once apparent.

Let us first examine the reason of the matter, next consult the authorities upon it, and finally ascertain what the practice has been with regard to it.

The reason of the matter is this: A nation when at war has the right to injure its enemy, both in his person and in his property, wherever it can find him, and those only can contest this who contest the right

to go to war at all. A belligerent therefore has the right to inflict injury by capturing his enemy's property, for he has the right to inflict it by taking his enemy's life. But while this is admitted, it is said that the neutral has a conflicting right, the right, namely, to carry on his commerce as freely as he is accustomed to do in time of peace.

With this neutral right it is said the belligerent must not interfere any more than the neutral must interfere with the right of the belligerent. And, moreover, it is argued, the belligerent cannot interfere with it since a neutral ship is held to be neutral territory which cannot be violated.

Now if it were true that there were two rights, and if they conflicted as is said, there can be no doubt as to which of the two should have the preponderance. The belligerent has his existence, for that is the final stake in war, to defend; upon the exercise of his powers of offence depends his power to defend it, and just in proportion as he is shorn of these so is he brought near to destruction. Not so the neutral. He is secure since no man assails him; if his right be touched, nay, if it be overthrown altogether, no harm can come to him beyond a temporary loss of profit ending with the war which, if it be so, occasions it. And if it were true that a nation defending its existence by the exercise of a right must by exercising it cause a temporary diminution in the profits of a nation in no peril of its existence, the law of Reason and of Nature must allow and sanction the injury.

But the argument does not rest upon this ground. It rests upon the very nature of neutrality itself. Neutrality consists in standing utterly aloof from taking any part whatever in a struggle between

belligerents. It consists not in impartiality in the conflict but in abstention from it; and this shows us at once that a neutral cannot have any rights at all as a neutral; for no rights can accrue to him out of a conflict with which he has nothing to do. He retains the common rights that all nations have in time of peace; he neither does nor can gain any new rights; but he has also, arising out of the war, the obligation of his neutrality, which lies in this, that he must now exercise his common rights so as not to take any part in the war. He has no new rights, but he has a new duty, that of complete abstention from the conflict, and unless he fulfils that duty he ceases to be neutral.

It is undoubtedly true that the existence of war brings with it certain grave inconveniences to the neutral State, such as before it was not exposed to. It is debarred from entering blockaded ports, it is debarred from free trade with either of the belligerents in war materials, and it is held bound to exercise a diligent watch over its subjects to prevent them from taking active share in the war. These inconveniences and this duty are entirely new, and arise solely out of the state of war; yet by universal consent and practice, as well as by reason and justice, they are sanctioned and declared to be inevitable accompaniments of war. The rights of a State fighting for national existence are admitted and declared to be superior to the convenience of a State trading for individual profit, and no voice has ever yet been raised to claim that, in the instances cited, the convenience of the neutral should be preferred to the rights of the belligerent. The principle is therefore clear, that when a war arises even the common rights of the neutral are subject to limitation in their

exercise so far as that limitation has now become necessary from the new state of things, in order to secure that the neutral shall be neutral and shall abstain from the war.

But while in the cases cited the limitations of the neutral's common right in ordinary times have been admitted, accepted and established, a claim has nevertheless been set up that in one respect, and that the most important, his common right shall be, not merely exempt from limitation, but that by the very event of war which limits all others this shall be exaggerated and receive new and greater proportions than ever before it had. It is conceded that by the event of war, the neutral is bound by new duties with regard to his own commerce; but it is contended that he acquires new rights with regard to the commerce of the belligerents. It is allowed that he is bound henceforth to place new limitations on his own trade, but it is alleged that he is entitled to enjoy new privileges in the trade of the belligerents. It is admitted that he has no right to protect his own subjects or their property from the lawful operations of the war, but it is pretended that he has a right to protect the property of one belligerent against the other.

To this and to no less amounts the claim which has been raised, that a neutral has the right to carry belligerent property over the seas in time of war, and to secure it from capture by the cover of his flag. The question at once arises, whether this is in consonance with the duties of neutrality? A moment's reflection will show that it is a flagrant violation of them.

For it is a claim to extend to property of one or of both belligerents a protection which the belligerent

cannot provide himself. It is a claim to give to neutral bunting a force not found in belligerent arms. It is a claim, not to continue the exercise of the general right to trade peaceably, which existed before the war, but to protect and to transmit property liable to the effects of the war. It is a claim to a traffic which did not exist before the war and which is only made possible by it. It is a claim to withdraw belligerent property from belligerent risks for neutral profit. It is a claim, in short, to protect the most vulnerable part of one or of both belligerents, and therefore to take part in the war, which is the negation of all neutrality.

The right of a neutral to trade with a belligerent, though it has sometimes been denied,[1] cannot be contested; his right to security against injury in his own property other than contraband of war, even when taken to or brought from a belligerent port not blockaded, is not to be impugned. But that is very different from the claim set up that he shall be

[1] "What De Witt himself thought of the rights of neutrals, "when his own country was belligerent, may be collected from "the famous placard published by Holland, in 1652, upon the "approaching war with England. Not content with interdicting all carriage by her own subjects of neutral property into "the ports and harbours of her enemy, she gives notice to "neutrals themselves, though in their passage to other neutral "countries, not to be found on the coasts of England, or its dependencies, on pain of incurring suspicion; and, if found to "be laden 'en partie ou entièrement de quelque munition de "'guerre *ou de bouche*,' on pain of being brought into the ports "of Holland, and confiscated by the Dutch Admiralty."[1]—Page 133, *A Treatise of the Relative Rights and Duties of Belligerent and Neutral Powers in Maritime Affairs.* By Robert Ward, Barrister-at-Law, in 1801. (Reprinted from the original edition by Lord Stanley of Alderley, 1875.)

[1] 12 *Corps Diplom. XXXVII.*

allowed to cover with his flag property not his own, but that of a belligerent. In such property he has no interest whatever beyond the freight he earns for carrying it. It is in its nature undoubtedly and beyond all question liable to confiscation by the other belligerent, and the neutral, if he be honest in his neutrality, can have no desire to relieve it from its natural liabilities. The case of contraband of war and the unquestioned rules applying to that, show clearly the principle applicable to this. Thus no neutral is allowed to protect from capture by his flag arms, ammunition, or contraband of war in general, when destined to a belligerent, not even if at the time of capture they be *bonâ fide* his own property. How then is it to be supposed that he can justly claim to be allowed to protect belligerent property? Contraband of war destined to a belligerent is no more liable in its nature to confiscation than property belonging to the belligerent; so long as it is in the neutral country it is not contraband at all, and it only becomes so on the high seas from the fact of its being in transport to the belligerent. It is the carrying to the belligerent destination, and the carrying alone that gives the contraband character to what would be free and innocent had it remained in the neutral territory.[1] Yet contraband of war even when the property of the neutral is left to confiscation without any attempt at protection, whenever it is intercepted

[1] "Sur un territoire neutre il n'y a pas de marchandises de "contrebande; toutes y sont libres. Elles ne deviennent con-"trebandes qu'au moment où elles en sortent avec direction "pour un lieu dont leur nature les exclut."—Massé, *Le Droit Commercial dans ses rapports avec le droit des Gens.* *See* also Lampredi, Wheaton, Ortolan, and Heffter, and Pratt *On Contraband.*

by the other belligerent in neutral vessels. How much more then must belligerent property be so left. If contraband of war, which is only confiscable by reason of the incident of transport, be liable to capture, how much more must belligerent property, which is confiscable by its very nature, be so. The state of war gives the belligerent the right to capture contraband of war destined to his enemy; the state of war gives him an equal right to capture property belonging to his enemy; one right is as undoubted as the other; it rests upon the same principle and is justified by the same sanctions. How can the neutral admit the exercise of the one even when it deprives his own subjects of their property, and question the other when it touches property in which he has no interest? He may indeed permit his subjects to carry on both kinds of traffic, but if he is precluded from protecting them in the one kind when intercepted, he is equally precluded from protecting them in the other. He may permit both kinds of traffic to be carried on under his flag, but he cannot assume to protect either, by his flag, from the exercise by the belligerent of his right to confiscate whenever he can intercept. To do this is to give aid to the belligerent, it is to cease neutrality and begin belligerency.

It is no answer to say that the neutral is ready to do the same by both sides; for he is bound to do it by neither. His duty is completely to abstain. And it has never been disputed in principle that the belligerent has the right to claim such complete abstention, even if the claim amount to one of interference with the usual trade of the neutral himself.

But except in the case, impossible to suppose, that both belligerents are exactly equal in maritime

strength in all waters, the neutral cannot give an equal advantage to each by carrying and covering the trade of both. Whenever and wherever the belligerents are unequally matched on the seas, the stronger of the two will be able at once to carry his own trade, and to prevent the other from carrying his. Not only does reason prove that this must be, but history shows that it is so.[1] And it follows therefore that so far from a neutral giving equal aid to both belligerents by carrying their property and protecting it from capture, he gives the greatest possible aid to the weaker, and inflicts the greatest possible injury upon the stronger of the two. He gives to the weaker protection to his weakness; he debars the stronger from the exercise of his strength. In other words he ceases to be neutral, and takes up a direct part in the war. He steps in to prevent one of the two belligerents from being reduced to extremity, and thus prolongs the war, so that if this neutral claim were allowable, war might be made interminable by the mere act and for the mere profit of States which are bound to take no part in it.

The fiction of a vessel being a part of the State to which she belongs has been sometimes raised here to bar the right of the belligerent to capture. To this scarcely serious argument it would be enough to

[1] In January, 1799, during the war between England and France, the French Directory informed the Conseil des Cinq Cents: "Il est malheureusement trop vrai qu'il n'y a pas un seul "vaisseau marchand naviguant sous pavillon français—quel "autre moyen d'exportation avons nous, que l'emploi des vais- "seaux neutres?"—*Code des Prises*, Tom. II., p. 385. See too appendix to Robinson's *Admiralty Reports*, p. 378, vol. ii. Again in 1805: "There was not a hostile mercantile flag, a few coasters "excepted, to be found on the ocean."—*War in Disguise*, pp. 71 and 229.

reply that if a neutral ship be in all respects a part of a neutral State, and entitled to the same inviolability, yet at any rate it cannot be entitled to more respect or to greater privileges than the territory of which it is assumed to be a continuation. Nevertheless here we have much more claimed for it; for it actually carries the property liable to capture from one part of the world to another, which the State itself does not and cannot do. Belligerent property is doubtless safe in neutral territory, as well it may be, since so long as it is there it is dormant and far from the hand of the belligerent, and being in neutral territory brings no increase of power to him. Yet it is none the less under the general sentence of confiscation pronounced by the declaration of war, it is only that the execution of that sentence is stayed so long as the property is as it were asleep. But the instant it is brought into activity by passing the neutral frontier line, the sentence at once takes effect, and the property becomes immediately confiscable. The neutral State merely holds condemned property in trust for the belligerent owner; but the neutral ship carries it to that owner. So long as it is in the neutral State it is necessarily dormant, and of no moment; but so soon as it begins to traverse the high seas in the neutral ship it becomes active and of great moment. The claim of the neutral that his territory shall protect from immediate capture condemned property which is separated from the belligerent is good; but it is a far different and greater thing to claim that the neutral ship shall with impunity carry that property to the belligerent, to be by him employed to recruit his strength for the war.

If, therefore, it be that neutral ships are neutral territory, the question is not thereby concluded, but

still remains; for it cannot be contended that it is more than territory or entitled to more than territorial immunities.

But the fiction has never held so much water. The ship is liable, which the State is not, to be visited and searched, and to have captured in her, which the State is not, contraband of war, even of neutral ownership. All practice, therefore, as well as all reason, shows that neutral vessels sailing on the high seas are not a part of a neutral State in any sense which entitles them to do that which the firm land cannot do.

CHAPTER VIII.

The Law of Nations as to the Right of Capture.

So much for the principle. Let us now see what has been laid down as the rule of international law by the great publicists. The oldest authority on the Laws of Maritime War is the *Consolato del Mare*, a code which was of recognized authority so early as the end of the eleventh century, and which was received and adopted from the Baltic to Constantinople. The rule there laid down is this:

"If an armed ship or cruiser meets with a merchant vessel "belonging to an enemy and carrying a cargo the property of "an enemy, common sense will sufficiently point out what is to "be done, it is therefore unnecessary to lay down any rules for "such a case."

"If the captured vessel is neutral property and the cargo the "property of enemies, the captor may compel the merchant "vessel to carry the enemy's cargo to a place of safety, where "the prize may be secure from all danger of recapture; paying "to the vessel the whole freight which it would have earned at "her delivering port." [1]

Grotius, that great and wise Dutchman, who has been called the Father of International Law, and who certainly was the first who reduced it to the form of a Science, wrote in the beginning of the seventeenth century. He adopted the *Consolato del Mare*, and transcribed the passage relating to this point; [2] and

[1] *Consolato del Mare*, cap. 273. Robinson's translation.

[2] *De Jure Belli ac Pacis*, Book III. 1, 5, and note to § 3.

although he does not argue the point out (for no pretensions contrary to the law of the *Consolato* had in his time been raised), yet there can be no doubt how he would have decided upon it, for he leaves it an open point whether a belligerent may not even prohibit a neutral from carrying his own property to the belligerent, which is to go much further than the prohibition to carry the property of the belligerent. The English Albericus Gentilis, the Dutch Voetius,[1] the English Zouch,[2] the Swedish Loccenius,[3] all equally accept and declare the principle that enemy's property is liable to capture, wherever found on the high seas. Puffendorff[4] refers to Grotius on the question, and like him admits[5] that it may be allowable for a belligerent to prohibit not merely neutral carrying but all neutral trade with the other belligerents. Bynkershoek, a Dutch publicist who wrote at the beginning of the eighteenth century, and Heineccius, a Prussian, his contemporary, were the first who found such a notion raised as that neutral ships could protect enemy's property, and they both contemptuously repudiate and denounce it.[6] "Why do you doubt?" asks the former of the two, and "Nobody doubts," replies the latter.

Thus it appears that from the eleventh to the middle of the eighteenth century there was no doubt or question as to this matter. Neither was such a claim as that of neutrals to carry, and by their flag alone

[1] *De Jure militari*, cap. 5, n. 21.
[2] *De Jud. inter Gentes*, p. 2, s. 8, n. 6.
[3] *De Jure maritimo*, 2, 4, 12.
[4] *Droit des Gens*, L. VIII, c. 6, and note.
[5] Barbeyrac, *Law of Nature and of Nations*, L. VIII, c. 6.
[6] Bynkershoek, *Quest. Jur. Pub.* cap. xiv. Heineccius, *de Navibus ob vecturam vetilarum mercium commiss.* cap. 2.

to protect from capture, enemy's property ever raised till 1752, when it was first advanced by the King of Prussia in a memorial to the Duke of Newcastle, whose answer[1] drawn up by four publicists, Lord Mansfield, Sir G. Lee, Dr. Paul, and Sir Dudley Ryder, is held by Montesquieu[2] as an "unanswerable reply," and by Vattel to have thoroughly established the position contended for.[3] The King of Prussia accordingly at once abandoned his contention, and did not carry out the threat which had accompanied it. Vattel and Montesquieu, as we have seen, pronounced against him, and Vattel, facing the whole question, declares that "if we find an enemy's effects on board a neutral ship we seize them by the rights of war."[4]

Against this array of great names there are to be set on the other side Hübner, a Dane, who had been employed by his own Government to endeavour to obtain an alteration in the law, and who wrote for that particular purpose, as an advocate would, and Schlegel, his disciple, both of whom have been utterly overthrown not less as reasoners than as authorities by Ward,[5] by Lord Liverpool,[6] by Lampredi, and later by Manning.[7] But from this time when the novel claim[8] was first raised, there begins a new set of

[1] *The Duke of Newcastle's Letter to M. Michell, the King of Prussia's Secretary to the Embassy.* London, 1753.

[2] *Lettre 45 à l'Abbé Guasco.*

[3] *Droit des Gens*, Book II, cap. VII, 84, p. 166, in Chitty's translation.

[4] *Droit des Gens*, Book III, cap. VII, 115.

[5] *Treatise of the Relative Rights and Duties of Belligerents and Neutral Powers.*

[6] *Discourse on the conduct of Great Britain*, 1759.

[7] *Commentaries on the Laws of Nations*, pp. 200, 233, 235.

[8] "We must remember all along, that whenever the maxim of

authorities who now being first challenged to examine it, all asserted and justified the old rule. Moser, a Dane,[1] Lampredi and Azuni,[2] Italians,[3] Chancellor Kent,[4] Wheaton,[5] Phillimore,[6] and Reddie,[7] in their writings, Sir William Scott (Lord Stowell) and the Admiralty courts by their decisions have exhausted the question; and on the other side we find only such men as De Martens and Klüber, De Rayneval and Ortolan (the last with much hesita-

"Free Ships Free Goods was admitted, it was always accom-
"panied with the reversal of the other provision of the *Consolato*,
"that neutral property on board enemies' ships should be free;
"and I am aware, that in some interpretations of very learned
"men it is said, whenever this reversal is stipulated for, which it
"frequently is, the other maxim follows along with it as a thing
"of course. This they ground upon the reason which has
"before been stated, that both principles take their rise in
"convenience; and that, in order to avoid the confusion, delay
"and chance of injustice which may arise in ascertaining the
"different national characters of the owners of the cargo, it is
"better to sweep away the whole at once under the national
"character of the ship."—Page 145, *A Treatise of the Relative Rights and Duties of Belligerent and Neutral Powers in Maritime Affairs*. By Robert Ward, Esq., Barrister-at Law, in 1801. (Reprinted from the original edition by Lord Stanley of Alderley, 1875.)

[1] Moser, *Versuch*, B. XX, cap. ii,, pp. 33, 34.

[2] *Droit Maritime de l'Europe*, cap. iii.

[3] *Du commerce des Neutres*.—Lampredi's adhesion to and assertion of the right as in conformity with the law of nations is the more remarkable because he avows that his great desire is to see the principle of "free ships free goods" established. His treatise is very valuable as being a collection and summary of all the arguments used by preceding publicists: the same remarks apply to Azuni.

[4] Kent's *Commentaries*, I, 126, 131.

[5] *Elements of International Law*, 162, 183.

[6] *Commentaries on International Law*, vol. ii, § 9i

[7] *Researches, historical and critical, in Maritime International Law*, vol. i, p. 463.

tion) who neither exhaust nor argue it, but merely lay down as an arbitrary rule one contrary to all reason, precedent, and authority.

There is indeed one writer who in recent times (1868) has undertaken to argue that the "primitive law," or in other words the law of Nature and of Justice which is the law of nations, either does or should forbid the capture of enemy's property in neutral vessels. This writer is M. Hautefeuille, and it has been reserved to him to show that the principle of "free ships make free goods," for which he contends, is one which was both originally invented and has always been advocated with the express and only purpose of putting an end to the maritime power of Great Britain. His work is a series of indecent and frenzied attacks upon that country, and its avowed purpose is to bring about a new and permanent armed neutrality with the object, equally avowed, of diminishing her power by enforcing the principle for which he contends.[1] There could not possibly be a better proof that M. Hautefeuille is aware of the vital importance to a maritime country of this question, nor a better proof that those who advocate his views do, wittingly or not, advocate the extinction of maritime power.

[1] "Ses forces mêmes," he says, speaking of England, "quelques "considérables qu'elles soient, viennent se briser contre les droits "des peuples neutres si ces peuples savent se réunir pour le "salut commun." And he admits also that the mere retention of the right to seize enemies' goods is sufficient to prevent their transport. "Le commerce," he says, "vit de sécurité, le com- "merce de transport comme tous les autres ne peut exister sans "cette garantie. Du moment où la propriété ennemie n'est pas "en sûreté à bord des navires neutres, navires qui ne doivent "pas même se défendre contre le belligérant, le commerce de "transport est frappé de mort."—*Des Droits et des Devoirs des Nations neutres.*

His object being so impudently avowed, his arguments might be disregarded as those of a person rendered incapable by passion of treating such a subject. Nevertheless, as he is the latest serious and solemn exponent of the new doctrine, it is worth while to examine his arguments. They are as follows:

I. That a neutral merchant ship on the high seas is neutral territory, and therefore a belligerent has no jurisdiction over it, and consequently no power of capturing goods in it.[1] II. That the aid and succour given by a neutral to a belligerent in carrying his goods, is only indirect, and therefore is entitled to immunity.[2] III. That the sea being free to all and

[1] "Le navire est une parcelle du territoire de la nation dont "il porte le pavillon; il conserve cette qualité partout où il se "trouve; à la pleine mer, sur cette route commune à tous les "peuples, mais indépendante des lois de tous les peuples, non "seulement il conserve cette qualité, mais encore il la communique "à la parcelle de l'Océan sur laquelle il flotte. Le navire acquiert "à son pays, par une sorte de droit d'occupation, la souveraineté "de cet étroit espace; c'est l'appropriation momentanée d'un "lieu libre."—*Des Droits et des Devoirs*, cap. ii., p. 291.

[2] "Je sais que le belligérant a le droit de nuire à son ennemi "par tous les moyens possibles, par tous les moyens directs; ce "droit, il le tient de la loi divine; mais cette même loi lui défend "l'emploi de tous moyens indirects.

"Le transport des propriétés ennemies n'a et ne peut avoir "aucune influence sur le sort des expéditions militaires, car il ne "s'agit ici ni de contrebande de guerre, ni de commerce avec un "lieu bloqué, mais seulement des objets déclarés innocents par la "loi internationale.

"Or, de même que le neutre souffre des conséquences indirects "de la guerre, par suite des devoirs qu'elle lui impose, et qu'il ne "peut pas s'en plaindre, lui qui est étranger au conflit; de même "le belligérant doit supporter, sans se plaindre, les conséquences "indirectes de la neutralité et de l'exécution de ses propres "devoirs."—*Des Droits et des Devoirs*, vol. ii., pp. 291, 292, 371, 372, 373.

the right to trade being an inherent right in every nation, the neutral retains this right in war as in peace, and must not have it diminished.[1] IV. That the Conventional Law of Nations by repeated and common consent prohibits the capture of enemy's goods in neutral ships.[2]

There is no difficulty in destroying these propositions. I. The neutral ship is not neutral territory in the sense here claimed for it. It is no doubt treated as such by a fiction necessary for the purpose of carrying upon it the jurisdiction of the municipal laws of the State to which it belongs; but as regards the international duties of that State, it is submitted

[1] "Le droit du neutre, c'est l'indépendance complète, c'est de "ne devoir obéissance et soumission à nul autre peuple, c'est la "liberté de faire tout ce qu'il veut, et par conséquent de com- "mercer selon sa volonté ou son caprice, avec l'un ou l'autre des "belligérants. C'est là son droit essentiel, le droit constitutif de "sa nationalité, le droit sans lequel le neutre ne peut plus avoir "la prétention de former un peuple."—*Des Droits et des Devoirs*, Vol. ii., p. 370.

[2] "Le droit secondaire n'a pas varié sur cette grave question "depuis deux siècles et demi, c'est-à-dire depuis que l'Europe a "commencé à sortir des ténèbres de la barbarie, depuis que le "commerce et la navigation, prenant des développements impor- "tants, sont devenus des éléments indispensables de grandeur et "de la prospérité des Etats; en un mot, depuis le moment où les "divers peuples ont eu intérêt à rechercher et à soutenir les droits "que Dieu lui-même leur a donnés sur l'Océan.

"A cette longue série d'actes publics et solennels dans lesquels "ont figuré successivement, pendant plus de deux siècles, toutes "les puissances maritimes, on ne peut opposer, dans le sens con- "traire, qu'un petit nombre de conventions, la plupart conclues "dans des circonstances qui, les rendant inégales, les frappent de "nullité, ou du moins leur enlèvent toute espèce d'autorité, et "certainement s'opposent à ce qu'elles puissent fonder une "jurisprudence internationale."—*Des Droits et des Devoirs*, vol. i., pp. 308 and 299.

to conditions which clearly prove that it is not "a "part of its territory." It is prohibited, for example, from having on board arms and ammunitions of war destined to a belligerent, which is not the case with the territory; it is prohibited from entering duly blockaded ports; and it is liable to be visited for the verification of its papers and nationality, and of the innocent nature of its destination and cargo. No such authority as is exercised over the neutral vessel can be exercised over neutral territory. It is clear, therefore, that the merchant ship on the high seas, being subjected to treatment and laid under conditions quite inadmissible in territory ashore, cannot claim to be such.

But if it be, then M. Hautefeuille's argument turns against himself.

His argument is, that the neutral territory afloat is entitled to all the respect and all the immunities of the neutral territory ashore. If this were true it would follow that nothing more can be claimed for the shore than can be claimed for the ship. And it would follow that since the ship is liable to search for, and to the confiscation of contraband of war, the shore must be equally liable, and that the belligerent has the right to enter a neutral State in order to seize, by force of arms if necessary, all articles contraband of war that he may there discover. Either this is true, or it is not true that the neutral ship is neutral territory, entitled to the same immunity as the soil of the State to which it belongs.

As to commerce by neutral vessels in contraband of war, M. Hautefeuille declares that it is properly prohibited, not as contraband, but "because the fact "of selling to combatants objects immediately ser- "viceable in the conflict is taking part in the hos-

"tilities and is a violation of one of the duties of "neutrality."[1] If this be true, and if it be true that the neutral vessel is neutral territory in the complete sense, it follows that the belligerent has a right to prevent the taking such part in hostilities, and such violation of neutrality, as well ashore as at sea, and therewith has also the right of visiting neutral territory ashore as well as afloat. Those who will not stand to this must abandon the fiction, for it is nothing else, that a merchant vessel on the high seas is neutral territory, and with it the argument based thereon, that as such it is entitled to protect belligerent commerce from capture.

II. The argument that the aid and succour given to a belligerent by carrying his commerce is only "indirect," and is therefore not a violation of neutrality, if it is good for anything is good to show that commerce in contraband of war is also no violation of neutrality. For that also is but an indirect assistance. Gunpowder, shot and shell and cannons are in themselves of no avail until they are in the hands of those who are to dispose and to use them, and are by them so used as to produce their effect; hence the selling and carrying of them to a belligerent does no direct but only an indirect injury to the other belligerent. And it is easy to conceive cases in which the assistance afforded to a belligerent by carrying his goods and by procuring for him supplies

[1] "Si la contrebande de guerre est un commerce prohibé, ce "n'est pas parce que c'est un commerce, mais bien parce que le "fait de vendre à des combattants les objets immédiatement "propres au combat, est une immixtion aux hostilités, une viola- "tion de l'un des devoirs de la neutralité, qui suffirait pour faire "considérer la nation qui l'a commise comme ennemie, et pour "la traiter comme telle."—*Des Droits et des Devoirs*, vol. ii., p. 281.

of money and of merchandise in exchange, may be of more effect in enabling him to continue the war than even a supply of arms and ammunition. M. Hautefeuille indeed has adroitly shrunk from the task of defining what is "direct," and what "indirect" assistance to a belligerent; but the definition and the distinction are broadly laid down in the Law of Nations. For a neutral Power to despatch or permit to be despatched from its shores an armed expedition against one of the belligerents is to take a direct part in the war, and this the neutral nation is bound to prevent of its own proper action. But to despatch supplies of arms and ammunition not accompanied by those who are to use them, or to run a blockade, is to give indirect assistance to the belligerent—and these acts the neutral Power is not indeed bound to prevent; but it is bound to leave those of its subjects who engage in them to be dealt with by the belligerent against whom they are directed. Here we see two kinds of "assistance," one which the neutral Power may and the other which it may not lawfully permit its subjects to give. The belligerent injured cannot however be held, and never has been held, bound to submit to either kind of participation in the war. In the case of direct participation, he calls upon the neutral Power to do its duty of prevention; in the case of indirect participation he exercises his own right of prevention by capture, and of punishment by confiscation. It is clear, therefore, that the fact of participation in a war by the neutral being "indirect" does not render it lawful.

M. Hautefeuille is fond of drawing his arguments from a consideration of man in his primitive state. Let us suppose then two men armed with bows and arrows fighting in coracles on the sea near the shore.

M. Hautefeuille allows that for a third man in a third coracle to come off with a new bow or a single arrow is a violation of neutrality; but he contends that if the third man instead of bringing a bow brings food and restoratives to the combatant who, exhausted by the want of these, and unable to obtain them himself, is on the point of surrender—this he declares is no violation of neutrality, but only legitimate trade to be held sacred. But let us try this doctrine of the lawfulness of indirect assistance a little further. Gold is in itself of no direct use in warlike operations. To supply it does not "bear upon the forces immediately "destined to combat and exclusively proper to war." It is, so far as war is concerned, a mere representative of other things and a means of acquiring them. To afford assistance therefore by a gift of gold is to afford assistance of a thoroughly indirect kind. Yet, if M. Hautefeuille's argument proves anything, it proves that a neutral may subsidize a belligerent for warlike purposes to any extent without the slightest violation of neutrality. Which is absurd.

III. As to the right of a neutral to trade in time of war, it is clear that he does not and cannot enjoy it to the same full extent as if there were no war. As a neutral he gains no new rights by the war, but on the contrary is burdened with new duties. He may no longer trade with either belligerent in contraband of war; he may no longer trade at all with blockaded ports. It is clear therefore that he no longer has "la liberté de faire tout ce qu'il veut et "par conséquent de commercer selon sa volonté ou "son caprice avec l'un ou l'autre des belligérants." He had it fully and completely in time of peace; but he only has it in time of war subject to the new duty under which he falls of absolute abstention from the

conflict. He had the right to trade in arms across the seas with both belligerents; he has now the duty to abstain from thus trading with either; he had the right to trade to all ports; he now has the duty to abstain from those which are blockaded. He had the right to carry the merchandise of both belligerents; he now has the duty to abstain from carrying that of either. In no one of the three cases is there any invasion of his right; in all there is the enforcement of the same duty of abstention from all that may affect the issue of the struggle.

IV. M. Hautefeuille seeks to prove that the conventional law of nations prohibits the capture of enemy's goods in neutral vessels, by the simple method of declaring null and void all the numerous conventions which have ever been made of a contrary effect.[1] Thus he declares the Convention of 1801, "entaché d'une nullité radicale" as regards Sweden, Denmark and Russia; and avers that the treaty of 1795 between England and America is equally void, because "unequal." But even thus his attempt fails. Passionate and biassed as he is, he is nevertheless forced to record many important conventions in which the ancient and original principle is embodied.

But, in fact, the very existence of conventions stipulating that, as between two given nations, free ships shall make free goods, proves that by the common law of nations that is not the case. For a consideration, a right may be waived for the advantage of a particular State; but that does not affect it with regard to other States with whom no such waiver has been made. And whatever Conventions may exist or may ever have existed, they can only prove that it has

[1] *See* Ward on *The Conventions anterior to* 1801.

been held advisable to waive this right in particular cases; they can never prove that the right has ceased to exist.

On a review of the whole matter then, it is abundantly made clear that the Law of Nations, as declared by the unanimous voice of its most revered expounders, denies and repudiates the claim set up by neutrals to withdraw from capture enemy's property at sea by the mere display of their own bunting.

It is true that upon many different occasions, and between many different countries, particular treaties have been made which allow the claim as between the parties; but these treaties do not make the law; they only modify it by a particular contract for a particular reason in a particular case; and the very fact of their existence (for otherwise they would not have been necessary) proves that the unmodified law is such as it has been stated to be, namely, that:

Any State when at war has the right to capture its enemy's property at sea, of whatever nature it be, and in whatever vessels it is found.

The exercise of this right has always been found to give so tremendous a power over its enemy to any nation possessed of the naval supremacy essential to its full exercise, that those nations whose power is on the land alone have always had for an object, not indeed to deny the right—for that would have involved the denial of the right of capture on land—but so to limit it as to render it of no avail. In the argument they had been, as to this day they are, completely worsted; but if Reason was known to be thoroughly against them, an occasion arose when, as was thought, Force was with them, and would enable them to impose by arms the novel doctrines which they had failed to establish by argument. In 1780

this attempt was first openly made, with the avowed object of acting against England, then at war with France, Spain and the American Colonies. The Armed Neutrality first solemnly asserted principles having this effect. It was declared that although enemy's property in an enemy's vessel should be liable to capture, yet that enemy's property in a neutral vessel should no longer be so liable unless it were contraband of war—that is, of such a nature as to be adapted for direct and immediate employment in warlike operations, such as arms or ammunition.

The effect of this novel principle was, that while it conceded the right of capture, it at the same time destroyed it. For any nation at war with another, its superior at sea, had but to ship its property in neutral vessels in order to be enabled to carry on with impunity that trade which the right of capture would otherwise destroy, and to retain those sources of revenue which would otherwise be stopped. The injury capable of being inflicted by capture at sea would thus have been reduced to a point of insignificance, and the power of making effectual war at sea upon the material resources of the enemy would consequently have vanished. The intention was too manifest to escape any observer, the invasion of right too flagrant to be met with aught but repudiation and resistance. And repudiation and resistance were made with equal effect. Sweden, Denmark, Prussia, Germany, Holland, France, Spain, Portugal, Naples, and the United States all joined with Russia in an armed support of the doctrine; but England stood firm against them all, and on the French revolutionary war supervening Russia herself reverted to the old rule, in a treaty with England which solemnly reasserted the original Law.

In 1800 a second Armed Neutrality was formed with the same object as its predecessor; but the next year the attempt was again abandoned, and the original Law again subscribed to by Russia, its originator, in the Convention of 5th-17th June, 1801.

On the pretensions put forward by the Armed Neutrality no better comment can be given than the despatch in which (in 1798) the Government of the United States vindicated the right of England to take French property out of American vessels, the exercise of which right France had requested America to disallow.

"The rights of England," said they, "being neither diminished "nor increased by compact, remained precisely in their natural "state, which is to seize enemy's property wherever found, and "this is the received and allowed practice of all nations where "no treaty has intervened. The desire of establishing univers-"ally the principle that neutral bottoms shall make neutral "goods is perhaps felt by no nation on earth more strongly than "by the United States. Perhaps no nation is more deeply in-"terested in its establishment; but the wish to establish a prin-"ciple is essentially different from a determination that it is "already established. The interests of the United States could "not fail to produce the wish; their duty forbids them to in-"dulge it when decided on as mere right."

America has acted upon these principles ever since. She has even refused to join in the renewed Declaration of the principles of the Armed Neutrality proposed to her so late as 1856. And yet America has been claimed as the Power, whose resistance to those very principles which she asserts necessitated that very Declaration which she rejects.

CHAPTER IX.

Privateers.

That every State when at war has a right to claim the aid of all its citizens in the prosecution of war is a principle so clear that it has never been contested. It has indeed been carried so far that the nations of the Continent claim and exercise the right, not only when actually at war but when at peace with all mankind; since by the system of universal military service, which is now in many countries established, they enrol all their citizens in peace, and during peace train and prepare them all for war. Since then the State thus compels its citizens to give aid in war, there can be no doubt that it has also the right to accept their aid when voluntarily offered. This is the case with Privateers, which are vessels provided, manned, and armed by private individuals, furnished with a commission by the Sovereign, and sent forth to attack the enemy in his commerce.

Though the right to send forth Privateers has never been contested, yet the propriety of exercising it has nevertheless been questioned, on grounds, which it is proposed here summarily to examine. In order to make the matter clear it will be as well to state here more exactly what a Privateer is, and under what conditions alone it can act. This is the more necessary, because, either from ignorance or from insincerity, the most erroneous and absurd notions have been promulgated on this point, by men

whose names and position should have been a guaranty that their speech was honest and accurate.

A Privateer (or Corsair, as it is sometimes called) is then, a vessel armed and equipped by a private person or persons, to the captain of which the Sovereign of a State at war, upon application of the owner, has issued a commission or letter of marque and reprisals empowering him to levy war upon the enemy by capturing his property. The essence and sole origin of the right thus to cruise and to seize enemy's property lies in this commission; without it the Privateer would be a Pirate.

With it the Privateer becomes a vessel of the State and a ship of war,[1] for all the purposes for which it is commissioned, so long as the war lasts. As such, Privateers are, equally with vessels of the State navy, subject to all regulations which the State may lay down for their conduct, and in order to secure the observance of these regulations, it has always been customary to cause them to give security (beyond any that the navy gives) by depositing a sum of money before sailing on their cruise, that they will duly observe the regulations in question.[2]

[1] "A ship furnished with a letter of marque is manifestly a "ship of war, and is not otherwise to be considered because she "acts also in a commercial capacity. The mercantile character "being superadded, does not predominate over or take away "the other" (Lord Stowell, in the "Fanny," 1 Dodson, 448). "Privateers are private property in one sense, but they have at "the same time a public character impressed on them by their "employment; though they are private property they are still "private property employed in the public service." On which ground it was decided by Lord Stowell that a Privateer was liable to seizure under a capitulation which stipulated that "all "private property should be respected." 1 Edwards, 271.

[2] *See* Act of Congress of 1812, sec. 3; *see* also the last Prize Act, 55 Geo. III., cap. 160.

In the second place it is to be observed that the Privateer, like the State ship, has only the right to carry the property he captures into port for adjudication, that no Privateer can touch a rope-yarn on board an enemy's vessel, or appropriate an ounce of merchandise except after final adjudication as lawful prize in the High Court of Admiralty,[1] and that if the master or crew commit any acts of outrage, or in excess of their authority, even in the performance of legitimate acts, both they and the owners are liable to the full value of the property injured or destroyed.[2]

That there may remain no doubt as to the character and the obligations of the Privateer, a copy of the form of the commission and of the regulations he was bound to observe, as they were last issued in 1812 and 1815, are printed in the Appendix.[3]

Thus it will be seen—1. That a Privateer can only act by virtue of a commission regularly issued by the State. 2. That in thus acting he is bound to adhere to the regulations imposed by the State. 3. That he gives heavy security for their observance. 4. That all he can do is to bring the property he seizes into port, there to be adjudicated upon. 5. That unless the property be declared lawful prize, he acquires no claim to it. 6. That if he has made seizure of property without probable cause he is liable to pay costs and damages to the owners.

Nevertheless, in face of all this, there have been found men ready to assert that the Privateer, who acts by public authority under the regulation of law, is not to be distinguished from the Pirate who acts

[1] *See* 55 Geo. III., cap. 160.

[2] *See* the case of the "Amiable Nancy," 1 Paine, iii.

[3] See pages 220 to 232.

without any authority, acknowledges no regulation, and bids defiance to the law.

Thus Lord Clarendon, then Foreign Secretary, said hastily at the Conference of Paris,[1] "La course n'est "autre chose qu'une piraterie organisée et légale"—as though piracy ever *could* be legal. But writing a considered despatch ten years later, in the name of the British Government, he was forced to retract this monstrous proposition, and laid it down that

"The character of a Privateer is determined by her commis- "sion, and if that is issued by the Sovereign Power of the "State whose colours she bears, neither her captain nor her "crew can be deemed to be pirates."[2]

Mr. John Bright, again, who, as a member of the Privy Council and once a Minister of State, should have spoken with some knowledge, said at a public meeting, "In the reign of Queen Elizabeth more than half of the shipowners, and especially those on the southern coasts, were engaged in piracy—*their ships were either pirates or corsairs, and I do not know the difference between them.*"[3] Again, in the debate in the House of Commons on the 13th April, 1875, Mr. Bourke, the Under-Secretary for Foreign Affairs, said, "Privateers can do whatever they choose, and "are bound by no rules whatever except those which "they make themselves."

When such is the ignorant notion held of Privateers and privateering by men in authority it is the less surprising that a prejudice should exist in the minds of men at large against the practice of accepting volunteer aid at sea. It is remarkable, indeed, since there

[1] *See* 22nd Proposal of the Conferences of Paris, 1856: *State Papers*, vol. 46, p. 128.

[2] Despatch to the Spanish Government, 6th January, 1866.

[3] *See Times* report of Mr. Bright's speech, 26th June, 1875.

is no such prejudice against the acceptance of volunteers on land, and since there is no kind of comparison between the much greater increase of strength which a maritime country must receive from volunteer aid on the sea, where her power is, as compared with that she gains from volunteers on shore, where her power is not.

The objections made to privateers do not, as has already been said (for they cannot)—touch the *right* to accept their services—they only deal with the propriety of the policy of exercising the right. These objections are mainly of a sentimental character. It is said and repeated that privateering is a "barbarous" method of making war, that it is a "relic of bar-"barism," that "the motive of privateers is plunder," that "they are one of the greatest scourges of war," that privateering is "opposed to civilization and "humanity," and that to abandon it tends to "miti-"gate the horrors of war."

It is simply necessary to say in reply to all this that Privateers act against property alone; that the one sole object with which they set out is to take property; and that they neither propose to take nor are permitted to take life, except in case of resistance to their taking of property. Unless, then, it be less barbarous and more civilized to take life than it is to take property; unless it be less humane to seize a cargo than to blow a ship's crew into the air; unless it be more horrible to capture inanimate merchandise than to dismember and destroy animate men; unless this be true, it must follow that the Privateer is far less barbarous and more humane in his method of injuring the enemy than any can be who go out only "to sink, burn, and destroy." The very fact that "his motive is Prize" is his greatest justification,

and the best proof that his method of warfare is the most humane: while the fact that he is one of the "greatest scourges of war" is the best proof that nations can be scourged by attacks on the property, more heavily than by attacks on the lives, of their subjects.

The case for Privateers has indeed been adequately stated by President Jefferson:

"What is war? It is simply a contest between nations of "trying which can do the other most harm. Who carries on the "war? *Armies are formed and navies are manned by individuals.* "*How is a battle gained? By the death of individuals. What* "*produces peace? The distress of individuals.* What difference "to the sufferer is it that his property is taken by a national or "a private armed vessel? Did our merchants who have lost "917 vessels by British capture feel any gratification that most "of them were taken by his Majesty's men-of-war? Were the "spoils less rigidly exacted by a seventy-four-gun ship, than by "a privateer of four guns, and were not all equally condemned? "*War, whether on land or sea, is constituted of acts of violence on the* "*persons and property of individuals;* and excess of violence is "the grand cause that brings about a peace—one man fights for "wages paid him by the Government, or a patriotic zeal for the "defence of his country, another duly authorized, giving the "proper pledges for his good conduct, undertakes to pay himself "at the expense of the foe, and serve his country as effectually "as the former—and Government drawing all its supplies from "the people, is in reality as much affected by the losses of the "one as the other, the efficacy of its measures depending upon "the energies of the whole. By licensing private armed vessels "the whole naval force of the nation is truly brought to bear on "the foe, and while the contest lasts that it may have the "speedier termination let every individual contribute his mite in "the best way he can—to distress and harass the enemy and "compel him to peace."[1]

That the use of the auxiliary force furnished by

[1] Article by Mr. Jefferson, 4th July, 1812. *See History of the American Privateers.* New York, and Sampson Low, London, 1857.

privateers is essential to the development of the whole fighting force of the country is proved as soon as it is admitted that there is any force in privateers at all.

But there neither is nor ever has been any doubt that privateers do furnish a most efficient means of action against commerce. It is that indeed which explains the anxiety of the non-maritime nations to cause this terrible arm to be laid aside, and which equally explains the determination of such a maritime power as the United States to retain it.

That great jealousy of and dislike to Privateers prevailed among naval commanders during the Napoleonic war is undoubted. This jealousy and dislike were expressed by Nelson and by many other naval commanders, not only in words, but on many occasions by acts of hostility and injury to the Privateers themselves, for which they were seriously rebuked, and ordered to make amends by the High Court of Admiralty.[1]

The jealousy was not unnatural, for it arose from the fact that the Privateers were active competitors with the Navy for Prize-money, and that Prize-money was a matter of the utmost importance to naval commanders, not alone, nor, we may well believe, principally because it enriched the commander himself, but also because it secured for him

[1] *See* Robinson's *Admiralty Reports, passim.* *See* also the case of the "Eliza" Privateer, whose owners recovered in July, 1807, from Captain Blackwood of H.M.S. "Nautilus" the sum of £2,888 10*s.* 6*d.* in satisfaction for illegal impressment of four of the Privateer's men, whereby she was deprived to that extent of her share of Prize-money, amounting to £151,000, the proceeds of the capture by the "Eliza" and the "Greyhound" (both Privateers) of the Spanish ship "Las dos Amigas" (*History of the Liverpool Privateers*, 1897, pp. 413-416).

the affection, confidence, and gratitude of his crew, and enabled him to command with certainty the services of other crews when fitting out other ships. The captains of the "Active" frigate and the "Favourite" sloop, on a May morning in 1761 captured the "Hermione," and each got as his share of that morning's work £65,000, while each of their commissioned officers got £13,000, each of their warrant officers £4,000, each of their petty officers £1,800, and each of their seamen and marines £480. These captains might well be jealous of any interference with the acquisition by the Navy of prizes so advantageous to themselves, and—which was more important—so certain to facilitate the manning of the King's ships, and thereby to further the interests of the public service; and they would naturally regard Privateers as interlopers, whose numerous and often most valuable prizes were so much withdrawn from the King's ships and the encouragement of the King's service.

It must here be remarked that even the greatest commanders showed a constant jealousy, in this matter of Prize-money, not of Privateers alone, but of each other. Naval memoirs are full of quarrels and complaints relative to the selection of particular commanders for the particular stations where Prize and Prize-money were most to be expected. Nelson himself had bitter disputes on the subject with Sir John Orde, and criticised severely in connection with the same subject the conduct of Lord Melville himself. It was but natural; for every naval commander then knew, and nobody affirmed it more strongly than Nelson, that as Prize-money is the naval seaman's only reward, so it is a most potent incentive to his exertions.

Under the Declaration of Paris, however, Prize-money (except in the rarest and most evanescent circumstances) is practically abolished altogether, since the enemy has afforded to him, in the neutral flag, an absolute protection against capture which he had not in the wars of Nelson's time. And with Prize-money Privateers too are abolished or affected to be abolished. Both stand or fall together, according to the Declaration. Consequently, if naval commanders still retain their dislike of Privateers, what they have now to ask themselves is this: whether it is better for the Navy to have no Prize-money at all, or to have Prize-money as in the old wars, coupled, as in the old wars, with the disadvantage of having to share some of it with Privateers? There can be but one answer to such a question.

CHAPTER X.

The British Method of Warfare; its Effect.

The British method of waging war was to assert and to establish a complete supremacy on the seas, and to utilize that supremacy for the distress of Britain's enemies by the extinction of their commerce. The establishment of the supremacy was no more than a means to the end. The end was the utilization of the supremacy, and the final object the material distress of the enemy to such an extent as to force him to a peace. By battle and by blockade was the supremacy established, in capture were its fruits reaped. No neutral flag then availed to cover enemy's property; so long as it *was* enemy's property it was exposed to the imminent risk of capture, and the certainty, if and when captured, of condemnation and confiscation. Moreover, the risk of capture was so great that few would face it. British supremacy at sea meant that the enemy could keep no ships at sea capable of doing battle with the British fleets, and could therefore offer no protection to his trade. That trade could not be carried on for him by neutrals. Consequently, it practically stopped altogether. In all things that had to come overseas there was a famine, and for all those things famine prices in every European country at war with England, so long as that war lasted. On the other hand, for all things that had to go overseas there was an arrest of trade, if not complete at least so consider-

able as seriously to distress all those subjects of the enemy engaged in producing commodities to be sent abroad. The import trade overseas was stopped, to the great injury of the enemy's subjects who were consumers, upon whom the prices of such imports were increased sometimes as much as twelvefold; the export trade overseas was equally stopped, to the equally great injury of the enemy's subjects who were producers, from whom were withdrawn the profits hitherto gained by the free sale of their produce to the foreigner. There remained only such trade as could be carried on by land, and such trade as, on the seas, could escape the British cruisers and Privateers, which was little indeed. And the result was great injury to the enemy in his material resources, great distress to all his subjects, and, after a time, great exhaustion, great impatience of the war, and an equally great desire to bring the war to an end, and to make peace with the country which was producing so great a distress to the land by so effectual an action upon the seas.

The extracts which follow, from the testimony of witnesses whose candour and good faith are in this respect above suspicion, suffice to show that this distress of the land by the full use of power on the sea was, during the last war (1793 to 1813) in which that power was used, of the most severe character; and that it was this and nothing else that enabled Great Britain to sustain that war during so many years against so many powerful nations, and at last to bring it to a successful termination.

Moreover, the British method was as merciful as it was effectual. For it touched the Pocket rather than the Person of the enemy; it spilt his Money not his Blood; it struck at Livelihood not at Life. The loss

of life caused by the great sea battles, which established the supremacy of Great Britain on the water, was absolutely insignificant, was as nothing compared with the loss of life caused by the land battles, which were fought during the same struggle; and when once the supremacy was established and admitted, the loss of life caused by its exercise in capture, and in prevention of commerce, was almost *nil*.

Finally, the British method was found not only to bring distress to the enemy, but to procure, even during time of war, increased trade, and to that extent increased prosperity, to Great Britain herself. When acting on this method Great Britain not only stopped the trade of the enemy, but she also invariably increased her own, so that the gain to herself was twofold.

Let us examine into the facts.

There was probably no period affording so gloomy a prospect for England, during the war with Napoleon, or putting so great a stress upon her resources, as that which was covered by the years 1809, 1810, and 1811. In spite of the victory of Trafalgar in October, 1805, which had left England undisputed mistress of the seas, the whole of western and southern Europe had fallen under the power of Napoleon. In 1805 he had acquired Venice and been crowned King of Italy. In 1806 Naples was occupied by his brother Joseph, Holland became the kingdom of his brother Louis, and he himself had won the battle of Jena, occupied Berlin, and conquered Prussia. In 1807 he had beaten Russia at Eylau, and made with her the treaty of Tilsit, which bound the two empires together, while in October of the same year Denmark had joined them in the coalition against England. In May, 1808, Charles IV. and his

son Ferdinand had abdicated in Napoleon's favour and made him titular King of Spain, of which he already was in actual occupation, while in November, 1808, his troops, which had been in Portugal since October, 1807, had entered Lisbon. In March, 1809, Sweden had joined Russia and France. In 1809 Napoleon took possession of the Austrian sea coasts and of the Papal territories. In short, it is not too much to say that, after the battle of Wagram in July, 1809, the whole western coast of Europe was hostile to England from the North Cape to Gibraltar, as well as the whole Mediterranean coast from Gibraltar to the Ionian Islands, and so remained till Napoleon's invasion of Russia in 1812. And, as the sign and the result of his power over the continent, he had by his Berlin decree of November, 1806, and his Milan decree of December, 1807, established his "Continental system," declared the British Islands in a state of blockade, and forbidden all intercourse with them.

At this time Napoleon was absolute master of the land of Europe, England as absolute mistress of the seas. And the event showed that sea-power is superior to land-power; that, if it be exercised as it may be and then was exercised, it is potent enough to dissolve the strongest land combinations; that navies can coerce armies; and that the most absolute command of all the land forces of all Europe was inadequate to resist the silent, secret, remorseless Sap that sea-power wrought when directed at Trade.

Three broad facts stand forth during these three years of greatest stress. (I) One is that France, and all those parts of the continent which had been forced into antagonism with England, suffered severely; (II) that meanwhile England herself, against whom Napoleon had banded the whole continent, neverthe-

less continued to increase her trade, her shipping, her population, and her prosperity in an unprecedented degree; and (III) that the deprivation of trade effected by the English maritime power, and by the Berlin and Milan decrees whereby Napoleon retaliated, brought all the continental countries allied with France against England into a distress so deep that at length they rather chose to affront the wrath of Napoleon than continue therein, and that they were thus one by one detached from him and turned towards England.

I. As regards the first fact there is indisputable and unimpeachable contemporary evidence. When in 1810 Napoleon, alarmed at the deplorable state of trade in France and on the continent, directed Savary, Duke de Rovigo, to consult the great French merchant M. Laffitte, this is what the latter said to the duke:

"La vérité seule convient au génie de l'Empereur. Ce qu'il "faut lui dire donc, c'est que le blocus cerne le continent et non "pas l'Angleterre; c'est au continent seul à qui il est défendu "de mettre un vaisseau en mer.

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"Sous ce rapport, monseigneur, il n'y a pas une puissance "qui, étant ostensiblement avec nous, ne soit en secret contre "nous et de cœur avec l'Angleterre.

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"Le génie lui-même, monseigneur, doit s'arrêter devant la "force des choses: les licenses déposent contre la vérité du "système. Ce qui est violent ne dure pas. Ainsi déjà le blocus "a été détruit par les licenses, les licenses n'ont fait qu'établir le "privilège dans le commerce, et ce privilège ne sert qu'à assurer "le profit des Anglais. Maîtres de tous les marchés, eux seuls "ont le droit d'acheter et de vendre: ils repoussent nos produits "on nous livrant les produits de l'Inde et de l'Amerique: les "sucres, par exemple, nous les payons six francs, et ils ne les "achètent, tout au plus, que huit à neuf sous." (*Mémoires du duc de Rovigo*, vol. v., p. 113.)

This entirely coincides with the later experience of Larpent, who, writing at Bayonne on 5th September, 1813, says, of the prices then current in that part of France,

"Bread about four sous a pound, or twopence English, and "good meat about eightpence English retailed. Tea only to be "had by ounces at a time as medicine; coffee very dear; sugar "(brown) from 4*s*. 6*d*. to 6*s*., white sugar 7*s*. the pound. The "betterave sugar was to be had sometimes at Bayonne."[1]

The distress in France had indeed begun almost as soon as the war itself, and had become severe as soon as British supremacy at sea had been established by the victory of Trafalgar. Already in 1807 it was acknowledged by Napoleon himself.[2]

"L'Empereur (Napoléon), reprit qu'il ne désespérait pas de venir "par tous ces moyens à bout de l'Angleterre et de la forcer à faire "la paix. Il s'informa si le commerce russe pourrait soutenir "longtemps l'état de stagnation qui résultait pour lui de la "rupture avec la Grande-Bretagne et si la Russie en souffrait "beaucoup? 'Au moins autant que la France,' fut la réponse "de l'ambassadeur. Napoléon convint que *la France y perdait* "*beaucoup*." (7 November, 1807.)

This distress was further testified to by an American traveller:

"The state of France as it fell under my observation in 1807," wrote an American traveller, "exhibited a very different per- "spective" from that of Great Britain. "*The effects of the* "*loss of external trade were everywhere visible*, . . . in the com- "mercial cities half-deserted, and reduced to a state of inaction "and gloom truly deplorable; in the inland towns, in which the "population is eminently wretched, and where I saw not one "indication of improvement, but on the contrary numbers of "edifices falling to ruin; on the high roads, where the infrequency "of vehicles and travellers denoted but too strongly the decrease

[1] *The Private Journal of F. S. Larpent* (London, Bentley, 1853), vol. ii., pp. 109, 110.

[2] *Alexandre I^er^ et Napoléon*, par Serge Tatistcheff, p. 241.

"of internal consumption, and the languor of internal trade; "and among the inhabitants of the country, particularly of the "South whose misery is extreme, in consequence of the exorbitant "taxes, and of the want of outlet for their surplus produce. In "1807 the number of mendicants in the inland towns was almost "incredible, . . . The fields were principally cultivated by "women."[1]

The result of the distress throughout the French empire was this:

[In 1810] "Such was the exhaustion and stoppage of in- "dustry in the principal towns of the [French] empire, that the "paupers amounted in many places to a third, in some two- "thirds, of the whole population."[2]

"NOTE.—At Rome in 1810 out of 147,000 souls 30,000 were "paupers.

"At Amsterdam in 1810 out of 217,000 souls 80,000 were "paupers.

"At Venice in 1810 out of 100,000 souls 70,000 were paupers."[3]

"The directly offensive use of Great Britain's maritime power "made by the ministry (between 1792 and 1800), in order to "repress the French system of aggression, consisted in *throwing* "*back France upon herself, while at the same time cutting off her* "*resources*. The continental armies which begirt her on the "land side were supported by subsidies, and also, when practic- "able, as in the Mediterranean, by the co-operation of the "British fleets, to whose influence upon his Italian campaign in "1796 Bonaparte continually alludes. *To seaward the colonial* "*system of France was ruined, raw material cut off from her manu-* "*factures, her merchant shipping swept from the sea.*"[4]

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[1] *Letter on the Genius and Disposition of the French Government*, by an American lately returned from Europe, pp. 189-192. Baltimore, 1810. *See also* Metternich's *Memoirs*, vol. ii., p. 476, for the unhappiness of France. Quoted by Mahan in *The Influence of Sea Power upon the French Revolution and Empire*, 1793-1812, vol. ii., p. 334. London, 1892.

[2] Alison's *History of Europe*, vol. x., p. 540.

[3] Hardenberg, xi., 253.

[4] *The Influence of Sea Power upon the French Revolution and Empire*, 1793-1812, vol. ii. By Captain A. T. Mahan, U.S.N., p. 395.

In 1797 the chief of the Bureau of Commerce in France wrote:

"*The former sources of our prosperity are either lost or dried up.* "*Our agricultural, manufacturing, and industrial power is almost* "*extinct.*"[1]

Here again is further testimony:

"*So severe was the suffering and poverty caused by this isola-* "*tion*, that in the moment of his greatest triumph, immediately "after signing the peace of Campo Formio, which left Great "Britain without an ally, in October, 1797, Bonaparte wrote: "'*Either our government must destroy the English monarchy, or* "'*must expect to be itself destroyed* by the corruption and intrigue "'of those active islanders. Let us concentrate all our activity "'upon the navy and destroy England.' . . . *To the Directory* "*the attempt thus to destroy British prosperity worked disaster.* "*To Napoleon it brought ruin*, owing to the greater vigour, wider "scope, and longer duration which he was able to impart to "the process. . . . *The justice or wisdom of this course* [of closing "the continent to British commerce as attempted by Napoleon] "is not here in question. It is enough to say that *it nearly* "*ruined Great Britain, but entirely ruined Napoleon.*"[2]

II. Turn now to England. Tooke tells us that

"Never before was the shipping of this country employed "at higher freights. The whole of the exportable produce of "the East and West Indies and of a large part of South "America came to our ports; and no part of the continent of "Europe could obtain a supply of coffee, sugar and other "colonial articles or of the raw materials of some of their manu-"factures except from this country . . . we may be said to have "enjoyed the monopoly of trade.

"In England in 1811 and 1812 prices of sugar, coffee, dye-"woods, spices and some descriptions of manufacture which

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[1] *Système Maritime et Politique des Européens dans le* 18me *siècle*, par Arnould. Paris, 1797.

[2] *The Influence of Sea Power upon the French Revolution and Empire*, 1793-1812, by Captain A. T. Mahan, U.S.N., vol. ii., pp. 396, 397.

"were the objects of our exclusion were more depressed than "they ever were before or have been since.

"In 1811 sugar, coffee, tobacco, cotton-twist, etc., were "despatched from hence to Salonica, thence on horses and mules "through Servia and Hungary to Vienna for Germany and France "—not to be wondered at that prices were high, viz., 5*s.* and "6*s.* per lb. for sugar, 7*s.* per lb. for coffee, 18*s.* for indigo and "7*s.* and 8*s.* for cotton.

"While sugar and coffee (1809-12) and all articles of trans- "atlantic produce were in this country extremely low, they were "on the Continent extravagantly high. Thus coffee and sugar "in bond which would not fetch 6*d.* the pound in this country "were worth from 5*s.* to 6*s.* the pound in France, and all the "transatlantic produce was high there in the same proportion."[1]

Then again the *Quarterly Review* said

"These peculiarities [*i.e.* of the late war] were the unusually "rapid increase of the population."[2]

As to increase of British trade, Alison tells us:

"Two-thirds of the exports of Britain in 1810 were to "America and India. Notwithstanding the astonishing success "of the French Emperor in the fields of European warfare, and "the indefatigable efforts he made to exclude English mer- "chandise from the harbours of the Continent, *the exports of the "country went on continually increasing till the year* 1811, when "they experienced a great and alarming diminution. They "sank sixteen millions in a single year. That, however, was "almost entirely *the consequence of the loss of the North American "market*, occasioned, not by the measures of the French Emperor, "but by our own injudicious and ill-timed Orders in Council."[3]

A more recent author adds further testimony to the same effect:

"The peace of Amiens [March, 1802], which had caused great "rejoicings in Liverpool, proved to be nothing more than a truce,

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[1] Tooke's *History of Prices*, published 1838, vol. i., pp. 105, 310, and 375.

[2] *Quarterly Review*, No. 57, p. 222.

[3] Alison's *History of Europe*, vol. xiv., p. 166.

"or short breathing-time between two desperate conflicts. A "series of military victories, culminating in the triumph of "Marengo [June 14th, 1800], had placed the continent of Europe "at the feet of France, or, rather, under the heel of Bonaparte. "The naval conquests of the 1st of June [1794], of St. Vincent "[February, 1797], Camperdown [October, 1797], and the Nile "[October, 1798], with innumerable smaller victories, had made "Great Britain mistress of the ocean, had placed the colonies of "France at her mercy, and inflicted upon the military and com- "mercial navies of France, Holland, and Spain, in the first ten "years of the war [1793-1802] the loss of 81 line-of-battle ships, "187 frigates, 248 smaller vessels of war, 934 privateers, and "5,453 merchant vessels. *Thus the commerce of Europe was lost "to Havre, Bordeaux, Cadiz, Rotterdam and Amsterdam, and "ultimately to Hamburg and Bremen, and concentrated in London, "Liverpool, Bristol, Hull, the Clyde, and the other ports of the "British empire.*"[1] (1803.)

Mahan says, as to this:

"Taking everything together [1793 to 1810] it seems reason- "able to conclude that *the direct loss to the* [British] *nation by "the operation of hostile cruisers, did not exceed 2½ per cent. of the "commerce of the Empire; and that this loss was partially made "good by the prize ships and merchandise taken by its own naval "vessels and privateers.* A partial, if not a complete compensa- "tion for her remaining loss is also to be found in *the great ex- "pansion of her mercantile operations* carried on under neutral "flags; for, although this, too, was undoubtedly harassed by the "enemy, yet to it almost entirely was due *the increasing volume "of trade that poured through Great Britain to and from the con- "tinent of Europe*, every ton of which left a part of its value to "swell the bulk of British wealth."[2] (1793-1810.)

III. What the effect was upon Napoleon's continental allies of the stoppage of their trade by England (and it may be added, by Napoleon, so far as he

[1] *History of the Liverpool Privateers and Letters of Marque, with an account of the Liverpool Slave Trade*, by Gomer Williams, pp. 387, 388.

[2] *The Influence of Sea Power upon the French Revolution and Empire*, 1793-1812, by Captain A. T. Mahan, U.S.N., vol. ii., pp. 226, 227.

could stop it), is made abundantly clear by all contemporary writers. It was this stoppage of trade that alienated all the suffering nations from France; this that, in spite of his victories ashore and of the complete submission of the nations to his will, continually sapped his power; this that finally alienated his closest ally, the Emperor of Russia; this that led directly to the Moscow expedition, the battle of Leipsig, and the ruin of the French empire.

The following extracts amply suffice to establish the truth of the foregoing statement:

"On sait au moins que la Russie tient à notre rivale par le "plus solide des liens, celui de l'intérêt matériel: depuis près "d'un siècle, grâce à des traités périodiquement renouvelés, la "Grande-Bretagne s'est acquis, en fait, le monopole du trafic avec "l'empire moscovite, en achète les produits, y déverse les siens; "*le commerce avec les Anglais est devenu indispensable à la Russie;* "*c'est l'une des fonctions de sa vie,* et il en est résulté entre les "deux Etats une persistance de rapports amicaux, une tradition "d'intimité qu'il ne dépend peut-être d'aucune volonté humaine, "fût-ce celle de l'autocrate, de rompre brusquement. *Rejetée* "*en dehors de ce qu'elle considère comme sa voie naturelle, la* "*Russie sentira toujours l'invincible tentation d'y rentrer, fût-ce* "*au prix d'une secousse violente, d'un changement de règne,* et "l'exemple du passé démontre que cette hypothèse n'a rien d'in- "vraisemblable."[1] (January, 1807.)

"Après Iéna [October 14th, 1807] maître des côtes depuis "Naples jusqu'à Dantzick, il a pu rendre son décret de Berlin, "constitutif du *blocus continental* proprement dit, interdisant "l'accès du littoral au pavillon britannique et prohibant l'im- "portation directe des denrées. Les Anglais ont détourné ce "coup en donnant pour réponse au décret de Berlin leurs célèbres "arrêts du Conseil, de 1807; par ces actes, ils ont obligé tous "les neutres, c'est-à-dire les navires des Etats d'Europe et "d'Amérique non engagés dans la lutte, à reconnaître, sous peine "de saisie, leur suprématie maritime, à leur payer tribut et à

[1] *Napoléon et Alexandre Ier. De Tilsit à Erfurt.* Par Albert Vandal. Vol. i., pp. 34-35.

"prendre d'eux licence de naviguer. Ces permis de circulation, "ils les ont désormais réservés, à de rares exceptions près, aux "seuls bâtiments qui ont consenti à se charger de denrées "coloniales leur appartenant, à porter ces produits sur le con- "tinent et à les y verser pour compte. Les navires neutres et "spécialement américains ont dû se faire les facteurs du com- "merce britannique; l'importation des denrées n'a pas cessé, et "seul le véhicule, le moyen de transport a changé. Alors, opposant "la violence à la violence, Napoléon a riposté aux arrêts du Con- "seil par un second décret, celui de Milan, rendu en novembre, "1807: considérant que l'Angleterre s'est subordonné et asservi "tous les neutres, il les a déclarés dénationalisés, devenus "Anglais, c'est-à-dire ennemis, et comme tels de bonne prise, "saisissables sur mer et dans tous les ports. Jusqu'à présent, "ce décret est demeuré, dans la plupart des pays du Nord, à "l'état de principe posé et de simple menace; il s'agit aujourd'- "hui (en 1810) de procurer réellement et de généraliser son "application. Le jour où aucun bâtiment neutre ne trouvera "plus accès dans les ports du continent, les denrées coloniales "auront perdu leur dernier moyen d'introduction et de débit: "l'Angleterre sera domptée.

"Seulement, *décréter l'exclusion absolue des neutres, après celle "des Anglais, c'est décider que l'Europe n'aura plus de commerce "maritime, c'est suspendre la vie économique de tous les peuples, "c'est leur imposer des souffrances au-dessus de leur résignation et "de leur patience. En s'attaquant à la masse incompressible des "intérêts, Napoléon se heurte à une force qui se dérobera à ses "prises. Faibles et terrifiés, les gouvernements se soumettent, "s'humilient, jurent d'obeir, mais conservent de secrètes com- "plaisances pour l'Angleterre: ils promettent sans tenir; ils ne "peuvent pas tenir*, car aucun Etat ne saurait se prêter de bonne "foi à tyranniser ses sujets pour le compte d'un maître étranger, "à se faire l'instrument de leur torture."[1]

"L'Angleterre succomberait-elle sans la lutte ardente qui la "serrait de plus près et qui touchait à son paroxysme? Toujours "debout, elle chancelait parfois, donnait des signes d'épuisement. "Mais *les armes employées pour la frapper risquaient de se re- "tourner contre la main qui les dirigeait avec une sorte d'exaspé- "ration et de fureur*. En ce temps [1810] où Napoléon a plié

[1] *Napoléon et Alexandre Ier. Le Second Mariage de Napoléon. Déclin de l'Alliance.* Par Albert Vandal. Vol. ii., pp. 441, 442.

"toutes les volontés depuis les Pyrénées jusqu'au Niémen, enivré "d'une force qui ne sent plus sa limite, il subit de plus en plus "le vertige de l'omnipotence; se croyant tout permis pour com- "pléter son œuvre parce que rien ne lui paraît plus impossible, "il multiplie les violences, accumule les fautes et, croyant se "rapprocher de son but, s'achemine à grands pas dans une voie "de perdition. *Le système adopté pour fermer au commerce "britannique ses derniers débouchés se traduisait par le plus "étouffant despotisme qui eût depuis longtemps pesé sur les peuples,* "par une ingérance oppressive dans le gouvernement des Etats, "par des annexions arbitraires, par une série d'empiètements en "pleine paix et de conquêtes par decret. *Ces usurpations con- "tinues, marques de servitude imprimées à l'Europe, achevaient de "troubler et de révolter la seule puissance qui eût conservé le senti- "ment et la fierté de son indépendance; elles rapprochaient "Alexandre des resolutions violentes;* elles vont ajouter et rat- "tacher à la question de Pologne d'autres causes de conflit; "autour de ce point central de toutes les difficultés, elles vont "grouper des complications accessoires, et *les mesures destinées à "ruiner l'Angleterre, si elles n'atteignent immédiatement leur but, "auront pour immanquable effet de précipiter la rupture avec la "Russie.*"[1] 1810.

"Enfin [en 1811] il venait de sortir et de formuler *son exigence "fondamentale, celle qui portait sur l'exclusion des neutres. A "supposer que la Russie y eût fait droit et eût accepté* l'ensemble "de ses propositions, *aurait-il renoncé à son expédition et décom- "mandé la guerre? On peut le croire,* car Alexandre eût cédé "alors sur tous les points essentiels, moyennant quelques satis- "factions de pure forme: il eût adhéré pleinement au blocus et "se fût remis au service de notre cause, sans compensation pour "lui-même ni sûreté."[2]

"Si Napoléon détient matériellement l'Europe à l'exception "de ses extrémités, *l'Océan lui echappe: l'Angleterre entoure "les côtes de ses flottes,* emprisonne les escadres françaises dans "leurs ports, oppose au blocus décrété à Berlin et à Milan "un contre-blocus, *et cerne l'immense empire de mers ennemis. "Le continent ne lui est fermé qu'en apparence: son commerce "déjouant les sévérités du blocus, s'infiltre toujours en Europe* par

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[1] *Napoleon et Alexandre Ier. Le Second Mariage de Napoléon: Déclin de l'Alliance.* Par Albert Vandal. Vol. ii., pp. 436, 437.

[2] *Ibid. La Rupture.* Par Albert Vandal. Vol. iii., p. 310.

"le Nord, par la Russie qui lui reste entr'ouverte. Les denrées "coloniales dont l'Angleterre s'est fait l'unique acquéreur, sont "reçues dans les ports russes, pourvu qu'elles s'y présentent à "bord de bâtiments americains employés et assujettis à ce ser- "vice. Parmi ces produits, les uns se débitent sur place, les "autres traversent le vaste empire: après qu'ils ont paru s'y "absorber et s'y perdre, on les voit réapparaître sur la frontière "occidentale, ressortir par Brody, devenu un vaste centre de "contrebande, et se répandre clandestinement en Allemagne. "*Alexandre continue à favoriser ce commerce et ce transit inter-* "*lopes. Bien plus, il a dessein, dans tous les cas, de développer* "*encore et de régulariser ses relations économiques avec l'Angle-* "*terre, car il y voit le seul moyen de mettre fin à la crise économique* "*dont souffrent ses peuples* et de recréer la fortune publique."[1] (1811.)

"Il n'y avait entre eux d'autres liens réels qu'une haine com- "mune contre l'Angleterre, permanente chez Napoléon et in- "hérente à son système, passagère chez Alexandre et combattu in- "cessamment par les passions et les intérêts du peuple russe. La "Russie était une cliente économique de l'Angleterre, le *blocus con-* "*tinental affamait le peuple, tarissait les revenus des nobles, privait* "*l'aristocratie de tous les objets de luxe auxquels elle était habituée* "*et blessait la nation entière.*"[2]

Then came the final result and the end.

"En 1811, ces conséquences se sont produites. La Russie est "forcée de *choisir entre Napoléon qui subjugue sa politique et* "*ruine son commerce, et l'Angleterre qui l'enrichit et lui pro-* "*curera la suprématie du continent: elle choisit naturellement* "*l'Angleterre.*"[3]

Here then was the result of a predominant sea-power directed at trade, as it acted upon a predominant land-power extending over wellnigh the whole Continent. "Coffee, sugar and other colonial

[1] *Napoléon et Alexandre Ier. La Rupture.* Par Albert Vandal. Vol. iii., p. 26.

[2] *Lectures Historiques. Napoléon et Alexandre.* Par Albert Sorel. P. 176.

[3] *Ibid.*, p. 194.

'articles" and "raw materials of manufactures" were to be had in England in plenty at the cheapest rates; scarcely to be had at all on the Continent at the dearest. Coffee and sugar cost twelve times as much in France as in England, and "all the transatlantic "produce was high in the same proportion." That was what sea-power did and what land-power was ineffectual to resist. That was what, in its unceasing daily stress upon the daily life of every man in the enemy's country made every such man, as Laffitte said, "secretly against us [France] and in his heart "with England." It was not Trafalgar that turned the scale, but the use against the enemy of that mastery of the seas which Trafalgar secured. It was that England so used that mastery as to make the Frenchman pay six shillings a pound for his coffee and his sugar while the Englishman was only paying sixpence.

Let us, however, make the comparison wider. A comparison of trade for the years 1792, 1809, 1810, 1811, and 1814, as between England and France, will show fairly enough the material effect of the war, from its beginning to its end, upon the two countries respectively, and also the material effect during the special years of stress of 1809-11.

TRADE OF GREAT BRITAIN AND IRELAND (OFFICIAL VALUES) ON PRICES FIXED IN 1694.[1]

	EXPORTS.	IMPORTS.	TOTAL TRADE.
	£	£	£
1792	12,680,000	24,904,000	44,500,000
1809	46,292,632	31,750,557	78,043,189
1810	43,419,336	39,301,612	82,720,948
1811	28,799,120	26,510,186	55,309,306
1812	Figures not obtained.		
1814	53,573,234	33,755,264	87,328,498

TRADE OF FRANCE.[2]

	EXPORTS.	IMPORTS.	TOTAL TRADE.
	£	£	£
1792	32,120,000	37,160,000	69,280,000
1809	13,280,000	11,560,000	24,840,000
1810	15,040,000	13,440,000	28,480,000
1811	13,120,000	11,920,000	25,040,000
1812	15,320,000	10,280,000	25,600,000
1814	13,842,116	9,558,236	23,400,352

These figures are eloquent indeed. They show that during the war, from 1792 to 1814, the trade of Great Britain rose from £44,500,000 to £87,328,498, or was nearly doubled; while during the same period the total trade of France sank from £69,280,000 to £23,400,352, or was reduced to little more than one third of its original value. The trade of Great

[1] MacGregor's *Commercial Tariffs*, 1849; Porter's *Progress of the Nation*; Alison's *History of Europe*, vol. ix., p. 456.

[2] Lavisse and Raimbaud's *Histoire Générale*, Paris, 1897, vols. viii. and ix. *See also State Papers*, vol. i., p. 47, and vol. ii., pp. 547, 548; Marshall's *Digest of Statistics*; Chalmers' *Comparative Strength of Great Britain*, 1802; Haydn's *Dictionary of Dates*, and Goldsmith's *Statistics of France*, 1832.

Britain was multiplied by two ; the trade of France was divided by three.

As the trade of Great Britain increased during the war, so too did her shipping, the figures for which are as follows :

SHIPPING BELONGING TO GREAT BRITAIN AND IRELAND.

	SHIPS.	TONNAGE.
1792	14,334	1,436,829
1809	19,882	2,167,221
1810	20,253	2,210,661
1811	20,478	2,247,322
1814	21,550	2,414,170

I have been unable, after various attempts in official and other quarters, to obtain any figures as to French ships and tonnage for these years; but there can be no doubt that, with the decline of her trade and her exclusion from the seas, her shipping declined even more than in a corresponding degree.

CHAPTER XI.

British Maritime Rights: their Long Defence, Subsequent Waiver, and Final Surrender.

The right to capture enemy's property on the high seas, in whatever bottoms it might be found, was never so much as questioned until the end of the eighteenth century. The question had, indeed, been raised in 1752 by Prussia, but had been at once and so completely answered that the King of Prussia instantly withdrew his contention.

But in 1780 a serious attempt was made to introduce the new rule that enemy's property should not be liable to capture in a neutral vessel unless it were contraband of war—that is, of such a nature and having such a destination as to be adapted for direct and immediate employment in warlike operations. This attempt was made by the Empress Catherine of Russia, and was supported by the Armed Neutrality, whereby she united Sweden, Denmark, Prussia, Germany, Holland, France, Spain, Portugal, Naples, and the American Colonies in armed support of the new doctrine. The new doctrine was avowedly directed against England, and the Armed Neutrality was intended to crush England. But England stood firm against all; and on the French revolutionary war breaking out the Armed Neutrality fell to pieces, and Russia herself again reverted to the old rule

in a treaty with England which solemnly reasserted the original law.

In 1800 a second Armed Neutrality was formed, with the same object as its predecessor; but the next year this object was again abandoned, and again Russia subscribed to the original law in the Convention of St. Petersburg of June, 1801.

The attempts made to change the original law, suggested in 1752, actually made in 1780, renewed in 1800, and finally abandoned in 1801, were, as has been said, all directed against England. For England had become great and powerful by undeviating adherence to the original common Law of Nations and by the exercise of the right it gave, and still gives, to capture her enemy's property wherever she found it on the high seas. Possessing as she did the naval supremacy essential to the full exercise of this right, it was found to give her so tremendous a power of acting on the resources of any other nation, that those nations whose power is on the land alone, have always had for an object, not indeed to deny the right—for that would have involved the denial of the right of capture on land, which would have affected themselves—but so to limit it as to render it of no avail. This they proposed to do by affirming the new doctrine "the neutral flag covers the cargo," and by denying the right to capture enemy's property when found in a neutral vessel. But, as we have seen, the attempts in this direction had failed because of the insistence of England upon the right attacked; the armed attempt to overcome England had been defeated by the exercise of the very right itself; and in 1801 things were restored to their original condition.

THE MYSTERIOUS WAIVER OF HER MARITIME RIGHTS BY GREAT BRITAIN IN 1854; AND THEIR STILL MORE MYSTERIOUS AND UNAUTHORIZED SURRENDER IN 1856.

And so they remained for another half century, when a series of events took place which the future historian of this country will scarce be able to believe, and which at this day no living man can either justify or comprehend.

In February, 1854 (the war with Russia, which was declared on the 28th of the following month, being then imminent) Lord Clarendon, then Secretary of State for Foreign Affairs, had no difficulty or doubt in assuring those who desired to know, that England would act on the law as it was and exercise the rights thereby given. On the 16th February, 1854, in reply to a despatch from M. Lousada, Lord Clarendon directed him to be informed that *the produce and property of the enemy was "lawful prize of war," and that "its being laden on board a neutral ship will not "protect the property;"* [1] while on the 25th of March, 1854, he wrote to a deputation of merchants "if it "[Russian produce] should still remain enemy's "property, notwithstanding that it is shipped from "a neutral port and in a neutral ship it will be con- "demned whatever may be its destination." [2]

Yet the French Government has revealed the astounding fact that while the British Secretary of State for Foreign Affairs was thus declaring in London what would be done, the British Ambassador in Paris was at the same time (on the 14th March) declaring that he had received instructions

[1] *State Papers*, 1853-1854, p. 106.
[2] *Times* Newspaper, March, 1854.

to communicate a declaration of his Government that this same thing would *not* be done, and that "the neutral flag should cover the enemy's mer-"chandise."[1] And on the 28th March, 1854, a notification without any signature or other marks of authority whatever was published in the *London Gazette* to the effect that the Government of Great Britain had determined to "waive" during the war the right of commissioning Privateers and of seizing enemy's goods (except contraband of war) in neutral vessels.[2]

Thus within three days of an official declaration signed by the Secretary of State, that the right of seizing enemy's goods in neutral vessels would be exercised, the public were informed by a notification that it would *not* be exercised. This is a chapter in history which loudly calls for explanation.[3]

But there is far more than this which needs explanation.

The Assumed Surrender of the Right by Lords Clarendon and Cowley.

The rights which had been "waived" in 1854, at the beginning of the war, were again brought under consideration in the Conference of 1856 at the end of it. On the 8th April, 1856, nineteen days after the Treaty of Peace had been signed, a proposal was made by Count Walewski, the French, and was supported by Lord Clarendon, the first English plenipotentiary,

[1] *British Neutrality Laws Commission Report.*

[2] *State Papers*, 1855-1856, p. 36.

[3] The notification in question was embodied and reproduced and for the first time invested with a semblance of authority by the Order in Council *subsequently* made at Windsor on 15th April, 1854.

which the Plenipotentiaries of Austria and Russia declared to be unforeseen and themselves to be unprovided for and without authority or power to accept or even to consider.[1] The proposal was for a Declaration whereof the points alone were then stated, but which was subsequently formulated as follows:

"ANNEX *to Protocol No.* 23.

Declaration.

The Plenipotentiaries who have signed the Treaty of Paris of 20th March, 1856, met in Conference. Considering:

That maritime law in time of war has long been the object of regrettable contestation;

That the uncertainty of the law and of duties in such a matter gives rise, between neutrals and belligerents, to divergences of opinion which may lead to serious difficulties and even to conflicts;

That it is advantageous therefore to establish a uniform doctrine on a point so important;

That the Plenipotentiaries assembled at the Congress of Paris could not better fulfil the intentions by which their Governments are animated than by seeking to introduce into international relations fixed principles in this respect:

Duly authorized, the above-mentioned Plenipotentiaries have agreed to concert together on the means

[1] "Count Orloff (Russian Plenipotentiary), observed that "the powers with which he had been provided, having for "their sole object the re-establishment of peace, he did not "hold himself to be authorized to take part in a discussion "which his instructions could not have foreseen." Count de Buol (Austria) said he was "not authorized by his instructions "to give an opinion on so important a matter." (*State Papers*, 1855-6, p. 128.)

of attaining this end; and having come to an agreement, have decided upon the solemn Declaration following:

1. Privateering is and remains abolished.

2. The neutral flag covers enemy's merchandise with the exception of contraband of war.

3. Neutral merchandise, with the exception of contraband of war, is not capturable under the enemy's flag.

4. Blockades, in order to be obligatory, must be effective—that is to say, maintained by a force sufficient to really prevent access to the coast of the enemy.

The Governments of the Plenipotentiaries undersigned engage themselves to bring this Declaration to the knowledge of the States which have not been invited to participate in the Congress of Paris, and to invite them to accede to it.

Convinced that the maxims which they have now proclaimed can only be received with gratitude by the whole world, the undersigned Plenipotentiaries do not doubt that the efforts of their Governments to generalize their adoption will be crowned with full success.

The present Declaration is not and will not be obligatory except between the Powers who have or who shall have acceded to it.

Done at Paris the 16th April, 1856.

(Follow the signatures.)[1]"

[1] The French text is as follows:

"ANNEXE *au Protocole No.* 23.

"*Déclaration.*

"Les Plénipotentiaires qui ont signé le Traité de Paris du "20 Mars, 1856, réunis en Conférence. Considérant:

"Que le droit maritime, en temps de guerre, a été pendant "longtemps l'objet de contestations regrettables;

"Que l'incertitude du droit et des devoirs en pareille matière

At the next sitting of the Conference on the 16th April, 1856, the Russian and Austrian Plenipotentiaries announced that they had now received instructions and authority to sign this Declaration, and it was signed accordingly by all the members of the Conference on that day.

"donne lieu, entre les neutres et les belligérants, à des diver-
"gences d'opinion qui peuvent faire naître des difficultés sérieuses
"et même des conflits;

"Qu'il y a avantage, par conséquent, à établir une doctrine
"uniforme sur un point aussi important;

"Que les Plénipotentiaires assemblés au Congrès de Paris ne
"sauraient mieux répondre aux intentions dont leurs Gouverne-
"ments sont animés, qu'en cherchant à introduire dans les
"rapports internationaux des principes fixes à cet égard;

"Dûment autorisés, les susdits Plénipotentiaires sont con-
"venus de se concerter sur les moyens d'atteindre ce but; et
"étant tombés d'accord ont arrêté la Déclaration solennelle ci-
"après:

"1. La course est et demeure abolie;

"2. Le pavillon neutre couvre la marchandise ennemie, à
"l'exception de la contrebande de guerre;

"3. La marchandise neutre, à l'exception de la contrebande
"de guerre, n'est pas saisissable sous pavillon ennemi;

"4. Les blocus, pour être obligatoires, doivent être effectifs,
"c'est-a-dire, maintenus par une force suffisante pour interdire
"réellement l'accès du littoral de l'ennemi.

"Les Gouvernements des Plénipotentiaires soussignés s'en-
"gagent à porter cette Déclaration à la connaissance des Etats
"qui n'ont pas été appelés à participer au Congrès de Paris, et à
"les inviter à y accéder.

"Convaincus que les maximes qu'ils viennent de proclamer
"ne sauraient être accueillies qu'avec gratitude par le monde
"entier, les Plénipotentiaires soussignés ne doutent pas que les
"efforts de leurs Gouvernements pour en généraliser l'adoption
"ne soient couronnés d'un plein succès.

"La présente Déclaration n'est et ne sera obligatoire qu'entre
"les Puissances qui y ont ou qui y auront accédé.

"Fait à Paris, le 16 Avril, 1856.

"(Suivent les signatures.)"

(*State Papers*, 1855-56.)

CHAPTER XII.

The Declaration of Paris Unauthorized, Contradictory, False, and no Part of the Law of Nations.

The proposal, as already stated, was first mooted at the Conference on 8th April, 1856, by Count Walewski. It was so new and unexpected, and it found the Russian and Austrian plenipotentiaries so wholly unprepared for it, that they had to refer home for instructions before they could even entertain it.

It appears, however, from information given in the House of Commons on 3rd May, 1898, that a draft of the proposal was transmitted from Paris to London by either Lord Clarendon or Lord Cowley, or by both, on the 6th April—two days before it was mooted at the Conference—and that Her Majesty "signified her approval to Lord Palmerston in "writing" on 8th April, the very day when it was first introduced to the Conference. It will be observed that, from the carefully-chosen and limited terms of the Attorney-General's answer,[1] it does not

[1] "Declaration of Paris.—Mr. T. Gibson Bowles (Lynn "Regis): I beg to ask Mr. Attorney-General whether he can "say if the assent of Her Majesty the Queen, on 8th April, "1856, to the signature by Lords Clarendon and Cowley of "the Declaration of Paris, first proposed at the sitting of the "Paris Conference on 8th April, 1856, and signed on 16th "April, 1856, was conveyed by any, and, if so, by what docu-

appear that the matter ever came before the Privy Council, or even before the Cabinet. It may fairly be inferred, therefore, that neither Privy Council nor Cabinet was cognizant of it; and that as the proposal made to the Sovereign was that of Lord Palmerston (then Prime Minister), so her approval was addressed to him alone and not to the Cabinet.[1]

It seems strange enough that a document of so

"ment; and, if not, how it was conveyed; and whether the De-
"claration of Paris has ever been submitted to Her Majesty, or
"been ratified by Her Majesty, subsequently to its signature on
"16th April, 1856?

"The Attorney-General (Sir R. Webster, Isle of Wight):
"The draft of the Declaration of Paris was received by Her
"Majesty's Government on April 7th, 1856. The document was
"submitted to the Queen, and Her Majesty signified her approval
"to Lord Palmerston in writing on April 8th. There was no
"necessity to ratify the Declaration, which contains no rati-
"fication clause. It was laid before Parliament by command
"of Her Majesty." (House of Commons, May 3rd, 1898.—
"*Hansard.*)

[1] It is difficult, if not impossible, to avoid the belief that the contrivance of the unwarranted signature of the Declaration was the act of Lord Palmerston, done without the previous knowledge and assent of his colleagues in the Cabinet. Such an act would be in no disaccord with his character and methods, as these are known to history. In August, 1851, the Queen, in her letter to Lord John Russell, had accused him of "failing in "sincerity towards the Crown"; and on 3rd February, 1852, she actually dismissed him for having, as Lord John said, "put "himself in the place of the Crown, neglected and passed by the "Crown." The act which provoked the dismissal, and this description of it, was of similar gravity with the giving of unwarranted instructions to sign the Declaration of Paris. Lord Palmerston, in defiance of the Queen, and without the previous assent of his colleagues in the Cabinet, had expressed to the French Ambassador in London (who had communicated it to Paris) his satisfaction at the success of Louis Napoleon (afterwards Napoleon III.) in the *coup d'état* of 2nd December, 1851. Hence his dismissal.

great importance as that by which the Sovereign is declared to have signified her approval in advance of a Declaration which laid aside the maritime rights, and altered the Common Law of England, should never have been presented to Parliament. What kind or character of document it was; whether a formal and solemn communication; or a letter; or, as seems possible, a mere initialled note on an informal memorandum; or whether it was authenticated by sign manual or otherwise, we know not to this day.

But there is more than this. The circumstances connected with the signature of the Declaration appear more mysterious, less explicable, and less satisfactory the more they are examined.

"The Draft of the Declaration," we are told, "was "received by H.M. Government on April 7th, "1856. The document was submitted to the Queen, "and Her Majesty signified her approval to Lord "Palmerston, in writing, on April 8th." But it is impossible that any draft of the document should have been received by the Government on the 7th, and approved by the Queen on the 8th April—for the Protocols show that on the 7th April the matter had not so much as been mooted at the Congress, that it was first mooted at the sitting of the 8th, and that even then the Russian and Austrian plenipotentiaries professed to see in it something entirely "unforeseen," unprovided for, and to them entirely novel; that even on the 8th there was no draft submitted, but only a general statement of the four points; and that the first draft of the full document was adopted at the sitting of 14th April; that at that same sitting Count Orloff, the Russian plenipotentiary, first made it a condition, on the part of Russia, that she "would "not engage herself to maintain the principle of the

"abolition of privateering, and to defend it against "Powers which might not deem it their duty to "accede to it;" that at the subsequent sitting of 16th April, when the Declaration was signed, the further condition was agreed to, that the four points should be indivisible, and that none of the signatory Powers should enter into any engagement not resting at once on all four of them; and that, on the same day there was added to this last condition, that it should not have a retroactive effect, or invalidate anterior conventions.

Let it here be remembered that on 8th April, the very day on which the Queen is said to have "signified her approval" in London, Lord Clarendon, speaking at the Congress in Paris, had received the proposal of the four principles of the Declaration, then first made by Count Walewski, by using these words:

"England, at the commencement of the war, had sought, by "every means, to attenuate its effects, and, to that end, she had "renounced, to the profit of the neutrals, during the conflict "which had just ceased, principles which up to then, she had in- "variably maintained. He added that England was disposed to "renounce them definitively, *provided that Privateering were equally "abolished for ever* . . . our state of civilization and humanity "required that *an end should be put to a system* which no longer "belongs to our time."[1]

To resume, then, what we are officially told:

The Draft of the Declaration was received by H.M. Government on the 7th, or seven days before any draft, properly so-called, was in existence.

The Draft—or draft of a draft—so received on the 7th—was necessarily without the two provisoes, first suggested in Paris nine days later, that the four

[1] *State Papers*, vol. xlvi., 1855-1856, pp. 125, 133, 137-138.

points must be treated as one and indivisible, and that this should, nevertheless, not invalidate anterior conventions.

The Draft submitted to, and approved by the Queen, was therefore necessarily incomplete, and different in important respects from the Declaration as finally signed, with the provisoes as then agreed to.[1]

Consequently, what the Queen approved was not what was actually done; and what *was* actually done, she has never approved or ratified.

Above all, the approval of the Queen in London, on the 8th, must have been strictly conditional on Privateering being "*abolished for ever*," and on "an end" being put to the "system" which involved Privateering; for Lord Clarendon, speaking on that very same day in Paris, made this the express condition of the renunciation by England of "principles "which, up to then, she had invariably maintained." Yet six days later Russia declared that she "would "not engage herself to maintain the principle of the "abolition of Privateering." The condition, therefore, of the Queen's approval on the 8th was rejected on the 14th. It was on that day authoritatively announced by Russia that Privateering was *not* "abolished for ever," that an end was *not* to be put to the Privateering system, and that the traditional

[1] In reply to a question put to him in the House of Commons on 2nd February, 1900, Mr. Brodrick (Under Secretary of State for Foreign Affairs), admitted that the draft submitted to the Queen was not the document as finally signed. "It was," he said, "substantially and in its material points identical with "that eventually adopted"—which is an official way of saying that it was not actually and really identical therewith. Nor could it have been, for it is materially impossible it could have contained the two provisoes subsequently added to it.

principles of England were to be renounced without the express condition attached to their renunciation! Of such an act as the acceptance of this arrangement no approval could have been, had been, or is alleged to have been given by the Queen. This new and unconditional bargain was nevertheless the bargain to which Lords Clarendon and Cowley agreed; but they indisputably did so without any approval by the Sovereign, and without any other authority so much as alleged, either from the Sovereign or the Privy Council, much less from the Parliament or the people of England.

That by a writing never produced, and the very nature, quality and authenticity whereof is unknown, the Sovereign should have approved of a document which did not then exist, renouncing upon an express condition not fulfilled, British rights always hitherto maintained; and that it should therefore be pretended that the authority to make the renunciation was adequate, and that the renunciation is irrevocably binding—surely this is a story so amazing and incredible as never yet was told to sane ears!

The Want of Authority for the Surrender by Lords Clarendon and Cowley.

Lords Clarendon and Cowley by their act implied that they had already received some sufficient authority to sign this Declaration. But it is manifest that any such authority to be good must be of a very formal, solemn, and undoubted character; for the act to be done was nothing less than the abrogation of all the principles and laws of maritime warfare hitherto admitted universally, the abandon-

ment of rights of the greatest possible importance never hitherto abandoned, and which, while they had been waived, in the Notification of 28th March, 1854, had been at the same time expressly asserted to appertain to Great Britain. Yet not only no such authority was at the time produced, but until the 3rd May, 1898, no authority whatever had ever been alleged empowering Lords Clarendon and Cowley, or either of them, to sign such a document as this. They had indeed produced in the sitting of 25th February, 1856, their full powers, which were duly verified, to make a Treaty of Peace between the Allies and Russia; but there is no reason to suppose that they were then any better authorized than Count Orloff or Count Buol to unmake the laws of warfare. When, on the 20th March, they signed the Treaty, the only powers they had produced were exhausted, and there is no record anywhere that they ever produced, or that they then had any powers whatever even to consider much less to agree to the tremendous change affected to be made in maritime law, to which they affixed their signatures twenty-seven days later. Indeed, Lord Clarendon soon (on 22nd May, 1856) after admitted in the House of Lords that he and his colleague had not, when at the Paris Congress, "confined themselves within the "strict limits" of their "attributions." There is therefore every reason to conclude that Lords Clarendon and Cowley themselves felt that they had no sufficient authority, and consequently no power, to agree on behalf of their country, to this Declaration. It forms no part of the Treaty of Peace, to which alone their public instructions and full powers extended. It is as strange in form as it is monstrous, false and contradictory in matter; and it has never received,

either from the Sovereign, from the Privy Council or from Parliament, that subsequent formal sanction which alone could suffice to give a semblance of adequate authority to an alteration in the rules of warfare so tremendous, a surrender of maritime rights so unprecedented.

The Extravagance and Nullity of the Declaration of Paris.

But whatever may have been the adequacy of the authority to sign the Declaration, the Declaration itself furnishes the proof of its own extravagance and nullity. It sets forth that the object is to "establish a uniform doctrine," and to "introduce into "international relations fixed principles;" and yet the whole Declaration affirms itself "not to be obligatory "except between the Powers who have or shall have "acceded to it." The absurd impossibility of calling by the name of uniform doctrine that which is only to be observed by those who reciprocally agree to observe it, is manifest; and no less manifest is the impossibility of regarding that as a fixed principle which is only fixed for those who accept it.

Even the very signatory Powers it will be observed are not held bound by the "doctrine" or "principle" in general, but only as towards the Powers that may equally accede to it. It would be the height of absurdity to regard such a contradictory declaration as being entitled to respect; and by the event it was seen to be and has since remained, absolutely false as a matter of fact. For the United States and Spain having refused to accede to it, privateering is *not* abolished, and the neutral flag

does *not* cover the enemy's merchandise, either for those two non-declaring States or for any one, even of the declaring States, when at war with either one of those two.

So far then from establishing any uniform doctrine, or introducing any fixed principle, the Declaration itself avows that the doctrine it professed to establish was not uniform; and that the principle it professed to introduce was not fixed; while subsequent experience has shown that the "doctrine" is no more established than the "principle" introduced.

It is material here again to insist on the fact that the signatures to the Declaration were given under conditions and reservations of an important character on the part of the Plenipotentiaries both of Great Britain and of Russia. On behalf of Great Britain, Lord Clarendon, at the sitting of the 8th April, had used these words: "England, at the beginning of the war, "had sought by every means to attenuate its effects, "and to that end had renounced, for the benefit of "the neutrals, during the struggle which had just "ceased, principles which she had, up to then, in- "variably maintained. England was disposed to "renounce them definitively, *provided that privateer-* "*ing were equally abolished for ever.*"[1] On behalf of Russia, Count Orloff on the 14th April, while announcing that he had then received power to sign the Declaration, "added, nevertheless, that in adopting "the proposition made by the First Plenipotentiary "of France, *his Court could not engage itself to main-* "*tain the principle of the abolition of privateering and* "*to defend it against powers* which might not think it "their duty to accede to it."[2] Thus, while the

[1] *State Papers*, 1855-1856, p. 128.
[2] *Ibid.*, 1855-1856, p. 133.

Plenipotentiary of Great Britain agreed to the Declaration only on condition that privateering was "abolished for ever," the Plenipotentiary of Russia agreed to it only on condition that his Court should not be expected to maintain or to defend that abolition! Lord Clarendon had agreed that Great Britain was to give up her principles for a price; but he then learnt that the price was not to be paid, that not only was privateering not to be abolished for ever, but that Russia would not even maintain or defend the principle of its abolition.

At the sitting of 16th April, moreover, on the proposal of Count Walewski, it was agreed as follows: "recognizing that it is in the common interest to "maintain the indivisibility of the four principles "mentioned in the Declaration signed this day, the "Plenipotentiaries agree that the Powers which have "signed it, or which shall have acceded to it, cannot "enter, in future, with regard to the application of "the law of neutrals in time of war, into any arrange-"ment which does not rest at the same time on all "the four principles the objects of the said Declara-"tion."[1] It was, however, simultaneously agreed that, "The present resolution, since it cannot have a "retroactive effect, cannot invalidate anterior con-"ventions." Hence it follows that any conventions then existing were saved and maintained, were exempted from the indivisibility and inseparability doctrine, were allowed in all possible divisibility, and were to remain in flat contradiction of the agreement thus come to.

What now becomes of the "uniform doctrine," or of the "fixed principles of international relations"

[1] *State Papers*, 1855-1856, p. 137.

which the Declaration professed to be its object to establish? There is palpably neither uniformity nor fixity in it. It is not uniform for all nations; only for those agreeing to it. But it is not uniform even for them; for Great Britain makes it a condition that privateering shall be abolished for ever; and, nevertheless, privateering is not only not abolished at all for non-agreeing powers, but even among the very agreeing powers themselves, one Power, at the moment of signing, declares that she will not maintain or defend the principle of abolition! Nor are the four points of the Declaration indivisible or inseparable either, but only as regards future conventions, and only then as regards conventions to be made by the signatory powers.

The cardinal point of the Declaration is that neutrals shall be allowed to carry on, and to protect from capture, enemy's commerce. The obligation is an obligation towards the neutral to spare the belligerent; the neutral claims the fulfilment of the obligation, and the other belligerent reaps the benefit of it. The consequences of this are greater than have been commonly suspected. Under the terms of the Declaration, for instance, it is not obligatory as between Great Britain and the United States in case of war between them. But in case of such a war it would still be obligatory as between Great Britain and the other adhering States. The result of this is that, while the United States would have, under the Declaration, full power to capture British commerce in neutral vessels, Great Britain would be debarred from capturing American commerce in neutral vessels, she being bound to the neutrals themselves not to do so. The neutral flag would protect American commerce from Great Britain, and

at the same time would not protect British commerce from America. Such is the inevitable result of the rules laid down by this Declaration, which professes to have established a "uniform doctrine."

That able writer, Mr. Dana, makes some remarks of a pregnant nature with regard to the new uncertainties and doubts introduced into the law of maritime warfare by the Declaration, whose very object was to put an end to "uncertainty" and to "divergences," and to establish "a uniform doctrine." He says:

"This rule [of 'free ships, free goods'], being followed through "that [Crimean] war, was, as we have seen, adopted by nearly all "the maritime powers of the world, large and small, except the "United States, in the Declaration of Paris. But it has been "seen that *this rule, established in previous treaties, has always "been bent or broken in the stress of national exigencies.* Indeed, "it is extremely liable to be so until *all maritime nations agree "to it, so that it can be enforced everywhere as a part of inter-"national law.*"[1]

Observe here the admission that the Declaration is not at present "a part of international law."

And again:

"*If a nation, party to the Declaration, is at war with one which "is not, the former is not bound to abandon its right to take its "enemy's goods from vessels of neutral nations which are parties to "the Declaration;* and as the stipulation is made, not from any "doubt that, as between belligerents only, such captures are the "natural and proper results of war, but for the benefit of neutrals "vexed thereby, *all parties to the Declaration, when they are "neutrals, are in danger of losing the benefits of it.* If a nation, "party to the Declaration, being at war with one which is not, "is at liberty to disregard the article, neutrals who are parties

[1] Wheaton's *International Law*, with Notes by Richard Henry Dana. London, 1866.

"cannot enforce it by resisting search, or by reprisals, or other-
"wise, in case of a war between two nations, both being parties
"to the Declaration, if either disregards it, can the other re-
"taliate? If so, does not he also violate the conventional right
"of the neutral, a party with him to the Declaration, from
"whose vessel he takes his enemy's property in the way of
"retaliation? Does that make a breach of treaty and *casus*
"*belli?* If either belligerent violates the rule, and the neutral
"power, being also party to the treaty, does not resist the act
"and vindicate its right under the Declaration, does it not give
"the other belligerent the right to complain, and to seek that
"summary and rapid redress which the exigencies of war often
"require or justify?

"*The assertion of these rights and obligations, and the real or*
"*pretended suspicion that the opposite belligerent or a neutral,*
"*parties to the Convention, do not observe the Convention, or insist*
"*on its observance, together with the pressure of national exigencies,*
"*have been found sufficient, whether as causes or pretexts, to render*
"*unavailing all former compacts for the freedom of enemy's goods*
"*in neutral vessels.*

"*It must not be supposed that the new rule, if adopted, will give*
"*neutrals entire exemption from loss and vexation. The right to*
"*stop and search will still exist, and in its full force.* The belli-
"gerent will still have the right to examine into the reality and
"*bona fides* of the ostensible neutral character of the vessel, and,
"for that purpose, to make all the investigation he now makes
"into papers and letters; and not only into those relating to the
"vessel, but also into those relating to the cargo, and to the
"destination of the vessel, if likely to throw light upon the
"ownership. The fraudulent use of a neutral flag and papers
"by belligerents may be expected to be almost universal, and
"the examinations will necessarily be strict and searching; and,
"even if the vessel is clearly neutral, there is still the right of
"search to ascertain whether the cargo or any of it be contra-
"band of war, involving an enquiry into the actual destination
"of the vessel and of the cargo, which, if contraband and bound
"to an enemy's port, will be pretty sure to assume an ostensible
"neutral destination; and if there is probable cause to suspect
"the vessel of being enemy's property, or the cargo of being
"contraband. . . ."

The Declaration itself then is false in fact, false in

its statement of doctrine, of principle, and of maritime law, and, so far as Great Britain is concerned, was signed without any known sufficient authority; while so far as Russia is concerned, it was repudiated at the very moment of signing in regard to one of its most important principles—the very principle indeed which has been suggested as a sufficient reward to England for her Plenipotentiaries' adhesion.

In addition to this, no security can be felt that other nations signatory to it will faithfully observe it, if they should hold their interests to dictate the contrary course. All experience proves that it would be futile to rely on the observance of such engagements, even when they have been put in the most binding form and made in a far more deliberate and solemn manner than the hasty and unexpected Declaration of Paris. The Armed Neutrality of 1780 was formed by Russia to establish the cardinal principle of the Declaration of Paris, that the neutral flag shall protect enemy's property; but in 1793—only thirteen years later—this same Russia finding herself at war, completely threw over and repudiated the principle the Armed Neutrality had laid down, and both openly propounded and by force carried into effect, the ancient and contrary principle, that enemy's property should be captured wherever found. And in fact, since the Declaration of Paris was signed there has not been an occasion when war seemed possible between Great Britain and another European Power, and when that other Power has not openly threatened Great Britain with the revival of Privateering against British commerce. Not once or twice, but repeatedly, both Russia and France have declared their intention in case of hostilities with Great Britain, to resort to and indeed mainly to rely upon

that "course" or privateering which the Declaration falsely declared to be abolished.[1]

[1] The *Times* of 25th October, 1876, in a letter from its Prussian correspondent, dated Berlin, 24th October, published the following:

"The *Moscow Gazette* advises the Russian Government to "issue *lettres de marque* against England in case of war. As to "the prohibition of *lettres de marque*, agreed upon in the Paris "Treaty, the *Moscow Gazette* disposes of the engagement by the "remark that treaties cease to be valid in war; and as it might "be urged by some that this particular treaty was concluded "for the very purpose of coming into force in war, the *Gazette* "adds that no treaties can be morally binding unless equally "advantageous to all parties concerned."

CHAPTER XIII.

The Effect of the Declaration of Paris.

And now as to the effect of this Declaration.

It affirmed four rules or laws of Maritime Warfare, of which two are old and true, and two new and false.

Those which are old and true are the third and fourth, which declare (1) that, "neutral merchandise, "with the exception of contraband of war, is not "liable to capture under the enemy's flag;" and (2), that "blockades, in order to be obligatory must "be effective, that is to say, maintained by a "sufficient force really to prevent access to the coast "of the enemy."

Those which are new and false are the first and second, which declare (1) that "Privateering is and "remains abolished;" (2) that "the neutral flag "covers the enemy's merchandise, with the exception "of contraband of war."

The two former rules of the Declaration can not only be admitted, but must be affirmed to be truly consonant with the Law of Nations; the two latter are as absolutely in contradiction of it and of the facts, as has already been shown; and with these two latter we are therefore alone concerned.

The effect of them upon Great Britain is, without doubt and beyond question, greater than upon any other Power; because Great Britain being the principal

maritime Power in the world, must feel more than any other the effects of any change in the laws of Maritime Warfare. And the fact that Great Britain had shown herself, before the change was made, able to resist the whole of Europe in arms, and to come victorious out of the struggle, by the very aid of the very principles now declared to be abrogated and reversed, must lead us to conclude *in limine*, that the change made is one fraught with especial disadvantage to her. Let us however examine the changes themselves and their effects.

Privateering as Affected by the Declaration.

I.—"Privateering is and remains abolished"—that is to say, is abolished for Great Britain whenever she is at war with any one of the signatory States; but not when she is at war with a non-signatory State, such as Spain or the United States. The effect of this is to deprive Great Britain of the service of volunteers at sea, and to preclude her from employing in warlike operations either the vessels or the half million of able fighting men of her vast mercantile and fishing marine; for a Privateer is but a private vessel commissioned by the State. She loses thus not only an offensive but also a defensive weapon; for Privateers do not only capture enemy's vessels, but also recapture those of their own nation; and they are to the State Navy a most valuable auxiliary, without which an amount of power proportioned to the size of the mercantile marine of the State remains unemployed in time of war. She loses the power of withdrawing a considerable number of merchant-vessels from exposure to the enemy as unarmed merchantmen by turning them into offensive weapons as armed cruisers,

and the power of thus at once diminishing the number of vessels liable to be captured, and increasing the number of those able to capture. She loses one of the best schools for the formation of daring and adventurous sailors, and with it those traditions of prize-money won in conflict, which have always been found the most urgent incentive to daring and adventurous men.

It has indeed been said that the general exercise of the right to arm and commission Privateers would act most injuriously for Great Britain, seeing that she of all nations in the world has the largest amount of commerce on the seas exposed to capture by Privateers. And the abolition of privateering which was pretended to be made by the Declaration of Paris of 1856 has even been represented—as is indeed suggested by Lord Clarendon's condition already quoted—as a gain to Great Britain sufficient to warrant her in giving up the right to capture enemy's goods in neutral vessels.

This argument is a specious one, but when examined it entirely falls to pieces.

Privateers are sea-going Volunteers.[1] They are found, fitted out, and maintained by private individuals in order to capture enemy's property on the seas, which property, when duly captured and condemned as good Prize by a Prize Court, is handed over to them, partly or wholly, as a reward for their exertions. They must be duly commissioned by the Sovereign of a State actually at war,[2] or they are no Privateers but Pirates; they have always been required in Great Britain to lodge a considerable sum of caution-money

[1] *See* President Jefferson's defence of Privateers, page 97.

[2] *See* Privateer's Commission, in Appendix, page 223.

to ensure that they shall observe the special regulations laid down for them, and the laws of war in general; and, like men-of-war, they are liable in costs and damages should they make unlawful captures or commit unlawful acts. It is necessary to repeat this, because it has been more than once ignorantly suggested that Privateers are a sort of Pirates acting without commission, subject to no laws, and bound by no rules.

In the first place it is clear that to take merchant vessels, and to arm and commission them as privateers, is at once to withdraw those vessels from the category of undefended merchantmen liable only to capture, and to bring them into the category of State vessels able themselves to capture. Every Privateer is at once a vulnerable point the less and a weapon the more. Every commission issued to a merchantman therefore diminishes the number of defenceless vessels by one ship, and adds one ship to the number of defending vessels.

Moreover it is to be remembered that the more commerce a nation has afloat the more vessels are there required for its defence, and therefore the more reason for accepting the services of volunteers to aid in that defence.

It is apparent then, that to reject the assistance of the merchant navy, whether to defend itself alone by virtue of letters of marque, or at once to defend and to attack by virtue of letters of marque and reprisals, such as the Privateer properly so-called receives, is to reject a defence of higher and greater importance to Great Britain—because more easily and in greater numbers obtainable by her—than to any other country.

An important element in the matter, and one which

seems to have been forgotten and overlooked, is the fact that Privateers are as valuable for defence as they are for attack. The rule that enemy's property in *enemy's* ships is liable to capture by State cruisers has never yet been invalidated; and all English commerce is therefore to this extent liable to capture by the enemy whenever we are at war. But, now, any English vessel thus captured must be sent into port for adjudication in charge of a prize crew. Under these circumstances she becomes at once liable to recapture from the enemy; and this in fact is the very case in which maritime supremacy most makes itself felt. A country that is strong on the seas must of necessity have on the seas a large commerce, for it is thence only that maritime strength can be derived. Of necessity therefore it must have much property exposed to capture by the enemy. But its security is that if it has a preponderance at sea, if it has a great number of State cruisers, and if it *does* increase their number by adding to them all the Privateers that offer, it becomes all but impossible for the enemy to reach his ports with any captures he may make. He may seize but he can rarely enjoy, for before the prize can reach his port it is all but certain to be recaptured. This is no fancy picture; it is precisely what has occurred in all the great maritime wars in which we engaged before the Declaration of Paris.[1]

The question is not one of the liability of British commerce under the British flag to capture in case of war—for it is still liable to that—but it is this:

[1] "No Privateers were then (1801) allowed to be fitted out "from France; consequently no recaptures, which were formerly "almost a certain thing."—*Life of Sir W. Parker.* London, 1876, p. 166.

Whether in case of war, by the employment on both sides of Privateers, Great Britain would inflict or would suffer the greater injury. The fact that this country possesses a far larger number of merchant vessels and merchant seamen than any other Power, is in itself a sufficient solution of the question, since it shows that she could send out more Privateers than any other, or indeed than all the others put together. She has therefore the most to gain of any Power by using this arm, since she could use it with the greatest effect against her enemy. The first immediate object of maritime warfare is to drive the enemy's flag from the seas (as was done in 1799 and in 1805), and to cover them with our own. The more completely this is effected, the less will our commerce suffer, for the less chance will the enemy have of making a capture, or of getting it to port without being recaptured; and this can only be effected with absolute completeness by the use of Privateers, who will range all seas in search of prize and salvage money.

The case of the "Alabama" has often been cited to show the damage a single vessel may inflict on a largely extended commerce, and to prove that privateering would be as injurious to a nation with a large trade, as was the "Alabama" to the United States. But the case of the "Alabama" was not the case of a privateer, and has no analogy with it. The action of the "Alabama" was piratical; for her captain, as he has himself acknowledged, destroyed property and vessels without any regular examination or condemnation of them—without any judgment of any Prize Court, and upon his own sole fiat. And the responsibility of those acts having been brought home to Great Britain, Great Britain was made to

restore the value of what was so destroyed. Moreover the course pursued by the captain of the "Alabama," which was that, not of capturing, but of destroying property, is a course which no Privateer would pursue. The immediate object of the Privateer is exactly the reverse of this—it is not to destroy but to preserve property, and to have it confiscated to his profit, which he can only do by taking it into port. A State vessel indeed may in the interest of the Government seek to destroy; but not the Privateer. In the very nature of the case it is necessary for him to carry his capture into a safe port, a matter of ease and almost of course if his own country commands the seas, but a matter of the greatest difficulty and almost of impossibility if the enemy commands them. It is therefore supremely ridiculous that the doings of the "Alabama" should be held up as showing the injuries a Privateer would do to an extended commerce, since that kind of injury is precisely that which no Privateer would seek to inflict.

There are those who affect to believe that it would be allowable for a belligerent to fit out Privateers in neutral ports, and imaginary pictures have been drawn of British commerce falling a prey to the depredations of Privateers armed in the United States in case of a war with any European Power.[1] It must however be assumed by those who use this as an argument that a neutral has the right to allow, and

[1] "It was well known that at the commencement of the "Crimean war, the Russian Government was going to commis- "sion privateers from the United States, and it was only the "Declaration (of Paris) in question which saved the world from "a horde of pirates issuing from the United States under the "Russian flag."—Mr. Evelyn Ashley in the House of Commons, 13th April, 1875.

would allow, armed expeditions to issue from its ports against a belligerent, a notion which was as solemnly denounced by every member of the Geneva Tribunal, as it has always been by every publicist.[1]

[1] "As the subjects are not under an obligation of scrupulously "weighing the justice of the war, which indeed they have not "always an opportunity of being thoroughly acquainted with, and "respecting which they are bound in case of doubt to rely on the "Sovereign's judgment—they unquestionably may, with a safe "conscience, serve their country by fitting out Privateers, unless "the war be evidently unjust. But on the other hand it is an in-"famous proceeding on the part of foreigners to take out com-"missions from a prince in order to commit piratical depredations "on a nation which is perfectly innocent with respect to this."—Vattel (Chitty's translation), Book iii. cap. xv. § 229.

"Les souverains neutres sont dans l'obligation non seulement "de défendre à leurs sujets d'accepter cette mission de guerre, "mais encore de prendre toutes les mesures en leur pouvoir pour "s'opposer à cette violation des devoirs de la neutralité. C'est "pour remplir cette devoir que les lois intérieures de la plupart "des Etats défendent expressément aux sujets d'accepter des "lettres de marque étrangères."—Hautefeuille, *Droits et Devoirs des Nations Neutres*, vol. i. page 154. *See* also Martens, vol. iv. p. 209.

"A Power which sends assistance in troops or money to one of "the belligerent Powers, or even in strictness which permits its "subjects to take out letters of marque from the enemy in order "to fit out a Privateer, can no longer demand to be treated as a "neutral power."—Masters, *On Captures*, p. 217.

"A neutral Government is bound to use due diligence to prevent "the fitting out, arming, or equipping within its jurisdiction of "any vessel which it has reasonable ground to believe is intended "to cruise or to carry on war against a Power with which it is at "peace; and also to use like diligence to prevent the departure "from its jurisdiction of any vessel intended to cruise or carry on "war as above, such vessel having been specially adapted in whole "or in part, within such jurisdiction, to warlike use."—Rules for the Award of the Geneva Tribunal on the "Alabama" Claims, Treaty of 8 May, 1871.

The United States by this treaty "agree to observe the rules "as between Great Britain and itself in future."

And it is remarkable that the United States, the very power singled out as being ready to permit this infraction of the duties of neutrality, is the very power which has made (in the "Alabama" case) the latest and the most effectual protest against it, and has claimed and received damages for a cognate infraction of neutral duties.

The assumed abolition of Privateering is therefore of no advantage to Great Britain, but quite the reverse; for she, of all nations, could best use this arm against her enemy, and could also best protect herself from its use against herself.

But even if it were true, which it is not, that the abolition, so called, of Privateering were an equivalent advantage to Great Britain, for the disadvantage in the admission of the doctrine that the neutral flag covers enemy's merchandise, there is, as we shall see later,[1] no security in the nature of the compact that the advantage would be reaped, although there is every probability that the disadvantage would be inflicted. In short, by the Declaration, so long as it lasts, the right to capture enemy's goods (except contraband) is extinguished, Privateering is *not* abolished, but still subsists.

Privateers, however, in any case are and must be useless unless there be property on the seas liable to capture. The first article therefore of the Declaration derives all its importance from the second, which is,

II. "The neutral flag covers the enemy's merchandise, with the exception of contraband of war."

This is the kernel of the whole matter, the one truly important point to which all the rest is subsidiary, and to affirm which the Declaration was made. Let us examine its effects.

[1] *See* page 157.

a. In the first place, it absolutely withdraws all property at sea, except contraband of war, from all the incidents of war. By so much, therefore, it lessens the power of a belligerent State to carry on war at all; and for a State like Great Britain, of which the main power is on the seas, it reduces the power of making any war to a minimum. For, as a matter of course, it will be found that any State at war with Great Britain would at once place the whole of its sea-going commerce under the neutral bunting which is by this article declared to be in itself and by itself a sufficient protection to that commerce against capture.

b. It reduces therefore the power of Great Britain in war by the whole amount of injury capable of being inflicted on an enemy through his commerce. It prevents the use of Sea Power for the stoppage of the enemy's Supplies. And as the amount of injury that could be inflicted by this means on a given amount of commerce must be in proportion to the maritime strength of the nation inflicting it—it follows that, by so much greater as is the maritime strength of Great Britain than that of any other nation, by so much greater is the loss of power which she sustains in comparison with any other nation.

c. It largely destroys the utility of blockade. For the utility of blockade lies in this, that it prevents the enemy from trading to and from receiving Supplies through the blockaded ports. But there is no unendurable loss to him in this, and therefore no irresistible pressure exercised by it or utility in it, if at the same time that his own ports are blockaded—even though all of them should be—he is able to carry on his commerce and to receive his supplies through the most adjacent neutral ports under the protection of

the neutral flag. And by so much greater as is the blockading strength of Great Britain than that of any other nation, by so much greater is the loss of power which she sustains in comparison with any other nation.

d. It relieves a belligerent from the necessity of defending his commerce (since it is protected by the neutral flag) by his fleet, and relieves him, therefore, from the urgent necessity of sending his fleet to sea. In a war with a State superior in naval power it would enable him to keep his fleet in his ports altogether, conscious as he would be that with the neutral flag doing its chief work there would be little but disaster to be looked for in naval conflict. The greater the disparity of strength, the greater would be the inducement to the weaker to avoid conflict on the seas with the stronger State; and by so much as is the navy of Great Britain superior to that of any other nation, so much the more certainly would it lack all opportunity of naval conflict.

e. It deprives the officers and men of the navy of all chance of prize-money, and thus not only removes a great incentive to zeal and activity among those in the service, but also greatly diminishes the inducements by which the naval reserves of men may be replenished and the manning of the navy may be renewed.

f. It exposes the carrying-trade of a belligerent to the risk of extinction. For through the absolute protection afforded by the neutral flag it must necessarily so operate as to drive commerce from belligerent into neutral bottoms.[1] And by so much as

[1] *See* Report of the Select Committee on Merchant Shipping, 1862, evidence of the shipowners, Mr. Allan Gilmour, Mr. Beazley, and Mr. Groves. "A short time ago, when it was

the carrying-trade of Great Britain is greater than that of any other nation, by so much greater would be the loss thus inflicted on her in war.

g. Finally, it tends to increase the duration of wars by removing from their incidence the commerce which furnishes the sinews of war, and by giving to the neutrals a direct interest in the prolongation of a conflict which very greatly increases their own profits in the carrying-trade.

There are, indeed, those who contend that this new principle of neutral protection to belligerent property is not disadvantageous but, on the contrary, advantageous to Great Britain. They remind us that Great Britain is dependent upon sea-borne commerce for the supplies of a large proportion of her food and raw produce; and argue that, therefore, she is advantaged by the general prohibition to touch any commerce under the neutral flag, since it affords to her commerce protection in time of war. But it must be remembered that the protection is only afforded on condition of removing the commerce from British to foreign vessels, on condition, that is to say, of excluding British ships from carrying British trade, and with the effect, as already has been pointed out, of wholly or partially destroying British shipping altogether. It offers Great Britain protection to her merchants only together with and in exchange for

" thought England might be involved in the war between France " and Austria in Italy, however improbable the rumour might " be, yet the moment it reached distant ports—such as Canton " or Calcutta—a second-class American vessel was able to get " freights at a fifty per cent. higher rate than a first-class British " ship could obtain."—Mr. Horsfall, in the House of Commons, 11th March, 1862. *See* also Mr. Lindsay's letter to Lord John Russell of 14th Oct., 1859.—*Parliamentary Papers*, 1859.

destruction to her shipowners, which is clearly not advantageous to a country in which the shipowner with his ships and crews are the very foundation of the national strength. Moreover, Great Britain of all countries least needs to receive from neutral bunting that protection to her commerce which in time of war she of all nations is best able to extend to it by her fleets. The changes in ships and armaments and the introduction of steam have all left her comparatively stronger at all points than before those changes were effected; for she is now more than ever the leader and mistress in the arts of naval construction, armament and machine-engineering, so much so that the foreign nations have not even learnt yet to imitate her, but still come to her to purchase the vessels, the guns and the engines which she best can produce. She is far better able to convoy her commerce than any other nation, and far better able also to attack successfully her enemy's convoys. And, finally, the British Islands are so situated and their approaches by sea such, that they are not capable of being blockaded. The relative disadvantage to Great Britain, therefore, inflicted by the Declaration of Paris, which substituted neutral bunting for convoying fleets, is as much greater to her than to any other country as her power to convoy and to attack convoys is greater than that of any other country with whom she may be at war.

It is said, however, that the commerce of Great Britain being greater than that of any other country would be more exposed to attack. That is no doubt true, yet it implies no relative disadvantage, but the contrary. For if the area of the body exposed to attack is greater, so also is the strength of the arm to defend it and to attack in turn. If she has more

seamen than other nations it follows that she has more men to fight as well as to trade on the seas; if more vessels, then more power to transport those men to the points where fighting may usefully be done. It is that very commerce which provides her with men to fight and supplies to furnish them; the greater it is, the larger is the recruiting-ground whence the force is derived to protect it, and to injure the enemy. It has never been pretended that on land a great populous nation full of able-bodied men engaged in hardy industrial operations is weaker than a small and sparsely peopled country, even though there be more plunder exposed to capture in the former than in the latter. By surprise the smaller may snatch a richer prize than the stronger, but the stronger will assuredly soon wrest that away and much more with it. In war it is not rich possessions which count as weakness but offensive power which counts as strength. Nobody would say that two men would be at a disadvantage in a conflict against one, because they expose two bodies to his blows, and he only one to theirs; for they have two pairs of arms, and he only one. A war in which commerce should not be protected by neutral bunting from its incidents must involve for Great Britain not only the necessity for defending her own commerce by arms, but also the power of attacking by arms her enemy's commerce. To suppose that she would lose more than she gains or anything like as much under such circumstances, is to suppose that a nation's strength is to be measured not by its power but by its weakness. She would suffer damage herself no doubt, but if strength be of any avail at all she must do far more than she suffered. War is successful in proportion to the injury inflicted on the enemy,

and we had better entirely ruin him, even at the cost of half ruining ourselves, than not ruin him at all.

Experience has, however, shown that Great Britain before she had been held bound by the Declaration of Paris was strong enough on the seas not only to destroy her enemy's commerce, but at the same time to defend and even to increase her own.[1]

That Great Britain would be at least equally able now, as in 1810, to defend her own vessels at sea, without there being any necessity for her to abandon them to that defence of neutral bunting which other nations, less powerful at sea, may desire, can scarcely be questioned by any. The predominance of her fleets is greater now than it was then, not merely in numbers but in other and even more important elements of strength. Her navy is predominant not less in quality than in quantity, and no British minister would dare to let it fall out of its predominance. So well is this recognized that even France, her one serious competitor, has avowedly

[1] "The merchant-ships of Great Britain (in 1810) carried most "of the commerce of the world, and in spite of having to make "head against numerous open enemies and the scarcely veiled "hostility of the Government of the United States—whose ports "remained closed to British ships of war, though they did not "declare war till 1812—England was yet able to keep down the "enemies' vessels of war and privateers. The prosperity of the "country was steadily on the increase. The exports from Great "Britain and Ireland, which were twenty-eight millions at the "commencement of the war, exceeded forty-five millions and a "half in 1809. The imports, which were twenty-five millions in "1803, were in 1809 thirty millions, and both imports and ex-"ports increased steadily while the war lasted, inasmuch that in "1815 the imports had risen to nearly thirty-two millions, the "exports to fifty-seven millions and a half, and the trade was "carried on almost exclusively in English bottoms."—*Life of Sir W. Parker*, p. 395.

given up the competition, has renounced the construction of battleships, and has thus avowed that she at least is not prepared to contest British naval predominance on the high seas, and that in the event of war between herself and Great Britain (which God forbid!) she would abandon the high seas to the British, and would confine her naval action to such raids and cruises as could escape the unchallenged British battleships.

But there is more than this to show the absence of any need for Great Britain to rely on neutral bunting for the protection of her merchant vessels and of their access to her shores. For such is the geographical situation and conformation of the British islands, that these vessels and their access would, in any circumstances—nay, even if British naval supremacy were lost—be largely self-protected. The sea approaches to these islands are so wide, so numerous, so convenient, that to prevent access to some one or other of our numerous splendid ports would be impossible. In order to effect this it would be necessary to close or to watch the whole stretch of sea from the Naze of Norway to the Orkneys; then the stretch from the Orkneys to the North of Ireland; thence round the west coast of Ireland to Cape Clear; from Cape Clear to the Scillys; and from Scilly to Ushant. This is the least that would be required; if any part of this immense line were left open, through that part the trade would go. But it is clear that to close, or even to watch, such an expanse of sea as this would be beyond the power of all the navies of the world. In any case therefore the stoppage of British trade in its access to British ports is not to be feared, nor has that trade any need of a neutral flag so long as it can count on a predominant British Navy.

THE DECLARATION WOULD NOT PROTECT CORN AND COAL FROM CAPTURE.

Moreover, it must be borne in mind that the immunity from capture of enemy's property under the neutral flag offered by the second article of the Declaration of Paris is not extended to contraband of war. Such British property, therefore, as is contraband of war would still be liable to capture, even in neutral bottoms. What, now, *is* contraband of war? This is one of the nicest points that Prize Courts have to consider, and the decision is always doubtful. But certainly Coal destined to a port of naval equipment[1]—destined, for instance, to a British coaling station—would be contraband; probably all Corn and Breadstuffs destined to any part of the British Empire would be contraband. France, for instance, in her warlike operations in Tonkin, declared rice to be contraband, and the trade therein was actually stopped, though the lawfulness of the declaration was never affirmed by a Prize Court. What, now, would be the result of a declaration by an enemy enforced by his Prize Courts, that Coal and Corn were contraband of war? That we should be unable to transport either Coal for our cruisers or Corn for our population, in neutral vessels under the bunting protection offered by the Declaration of Paris; that the Declaration would fail us in what would then be immeasurably the two most important articles we had to send and to bring over seas; and that, unless we could trans-

[1] In 1854 Sir James Graham, then First Lord of the Admiralty, instructed Admiral Sir Charles Napier, then in the Baltic, to seize, as contraband, any coal, even though destined to neutral ports, if he believed it was for Russian account.

port them effectually and safely in our own vessels, our navy would be starved on the seas for want of Coal, and our population starved at home for want of Bread. Whatever commerce of whatever other Power the Declaration might protect, it would not protect the most vital commerce of this country.

The Declaration Offers no Security for the Abolition of Privateering.

Others there are who, while they admit that Great Britain has been placed under a grave disadvantage by accepting the doctrine that the neutral flag covers enemy's goods, declare that she at the same time gained a compensating and equivalent advantage in the abolition, so-called, of privateering. The Declaration of Paris, they say, was of the nature of a bargain in which a valuable right was given for a valuable immunity. But unfortunately for those who so argue, the terms of the bargain are such that while every security is afforded that the right shall not be exercised, no security whatever is given that the immunity shall be enjoyed. The obligation to allow the neutral flag to cover enemy's goods, is an obligation towards all the States which shall remain neutral during the war. They profit by it, they have every interest in enforcing it, and every right to resist its infraction. It is an obligation towards all the world, less the other belligerent; and one which all the world has a clear right to enforce and a paramount interest in enforcing. Not so the obligation to desist from privateering. In that the belligerent is bound towards the other belligerent alone; and if he chooses to break his obligation, there is none to enforce it except that other belligerent, who, being already engaged in levy-

ing war upon him, is already doing his worst, and can do no more. The result is that while there is every security against the infraction of the one obligation, there is every inducement to the infraction of the other, should its infraction promise advantage; and that, whenever Great Britain shall be at war with any naval Power, she will be exposed at once to suffer all the disadvantage inflicted by the Declaration, and to reap none of the advantage said to be afforded by it; at once to be harassed by the enemy's privateers, and to be prohibited from touching the enemy's commerce. That this is no idle fear is proved by the language of the Russian press and merchants, who, recently forecasting the chances of a war with Great Britain, openly advised their Government to repudiate the first rule of the Declaration of Paris and to fit out privateers against British commerce.

CHAPTER XIV.

The Effect of the Declaration of Paris on Carrying Trade.

One of the first effects of war would undoubtedly be the subjecting of all capturable property on the seas to "War Risk" premiums of insurance. Mr. Dawson, a recent writer on the subject, tells us that during the great wars with Napoleon the war risk premium rose on voyages from Russia, Norway, Sweden and the Baltic, in 1811, to 22 per cent. This, however, was unusually high, the average rate of premium during 1812 being 6·5 per cent., as compared with 0·339 per cent. during 1892.[1] Mr. Dawson adds:

"An average all-round premium for our present trade would "be about 14*s.* taking steam and sail together, and for steam "only about 10*s.* per cent."

And he proceeds to say:

"In one respect we shall probably feel our war premiums, when "they do come, more keenly than we did before. If they reach "only the actual level they reached in the latter years of the "last war, they will increase eight or tenfold the ordinary "marine rate before the war. It is true this might not make "the total premium so heavy as it was eighty years ago. But "it would handicap us in our competition for the carrying-trade "of the world, where we have now hardly a rival, to a very

[1] *Our Next War in its Commercial Aspect.* J. T. Dawson. London, 1894, pp. 91-92, 94, 96.

"serious extent. For five per cent. on the value carried, added "to our freight and insurance (percentages being counted as "they are in these days) would be very serious in its effect."

Before the Declaration of Paris, enemy's property was capturable under any flag, and therefore paid the war risk premium, whether shipped in a neutral or in a belligerent bottom. But under the Declaration of Paris, enemy's property is capturable only when in a belligerent, and not when in a neutral, bottom. The war risk premium, therefore, whether of 5 or of 22 per cent. would attach, in case Great Britain were at war, only to British property carried in British merchant vessels ; and not to British property carried in neutral vessels—the same being, of course, equally true as regards the other belligerent. Under the old rule a British merchant vessel was as safe as any other for British property ; under the new rule it would be less safe, and the difference of risk would be represented by what the war risk premium settled down to, whether 5 or 20 per cent—which would be an additional charge to that extent, on British commerce carried in British merchant vessels.

It seems impossible to doubt, neither has any competent person who has looked into the matter ever doubted, that the effect of this must be at once largely, if not wholly, to divert British trade into neutral bottoms. The British merchant vessel would be deserted for the neutral by the British merchant; it would, in addition, be unable to continue the carrying it formerly did in time of peace for the present enemy; and, not all indeed, but a large proportion of our tonnage must be laid up for want of employment. Meantime a new and great demand has sprung up for neutral carriage. The neutral has had laid open to him, first the whole carrying-trade of the other

belligerent, which can no longer use either its own ships, or the British ships which formerly carried for it; and, secondly, a considerable portion of the carrying-trade of Great Britain herself. The neutral, it is true, does not possess the necessary tonnage for carrying on this new trade. But the laid-up ships of Great Britain, as well as those of the other belligerent, will be for sale, and for sale cheap; and a proportion of these, added to those that can be built by the neutral at home, will drive a roaring trade, and pay for themselves over and over again. Meantime, the result is that a large part—or as some think the whole—of the British carrying trade is lost, possibly never to be recovered.

This effect of war under the Declaration of Paris is ably set forth by the Select Committee of the House of Commons on Merchant Shipping, which sat in 1860, and which, appalled by the prospect it had itself set forth, hastily suggested as its own remedy the exemption of all private property from capture at sea—a suggestion dealt with elsewhere. The Committee, on page xiii of its Report, says:

"America was invited to be a party to this general international "agreement, but demurred, and coupled at first her assent to "the abolition of privateering with the condition that private "property at sea should no longer be subject to capture. Finally "she refused to be a party to a convention whereby she would "be precluded from resorting to her merchant marine for pri- "vateering purposes in case she became a belligerent. But this "is not surprising, for the United States has obtained a recog- "nition of the rights of neutrals for which she contended "throughout a former period of hostilities, and Great Britain "has surrendered her rights without any equivalent from the "United States. Our shipowners will thereby be placed at an "immense disadvantage in the event of a war breaking out with "any important European power. *In fact, should the Declara-* "*tion of Paris remain in force during a period of hostilities, the*

"*whole of our carrying-trade would be inevitably transferred to* "*American and other neutral bottoms.*

"From the evidence given by various witnesses it appears "that at a recent period, upon a mere rumour of war in Europe, "in which it was apprehended that Great Britain might be in- "volved, American and other neutral ships received a decided "preference in being selected to carry produce from distant "parts of the world to ports in Europe, whereby even in a "period of peace British shipowners were seriously prejudiced. "It seems, therefore, that the state of International law with "reference to belligerent rights affecting merchant shipping "cannot remain in its present state; for whilst England may "be involved in any great European war, the United States is "almost certain to be neutral; and thus our great maritime "rival would supplant us in the carrying trade.

"We must therefore either secure the general consent of all "nations to establish the immunity of merchant ships and their "cargoes from the depredations of both privateers and armed "national cruisers during hostilities; or we must resort to the "maintenance of our ancient rights, whereby, relying upon our "maritime superiority, we may not merely hope to guard un- "molested our merchant shipping in the prosecution of their "business, but may capture enemies' goods in neutral ships, "and thus prevent other nations from seizing the carrying trade "of the kingdom during a state of hostilities.

"Your Committee consider it their duty to call the attention "of your Honourable House to the importance of this question, "which, if not solved during a period of peace, may cause "incalculable embarrassment at the outbreak of a war. It is "doubtless the prerogative of the Crown to initiate proper "measures to maintain the honour and guard the interests of "the country in this respect. Your Committee, however, can- "not but express their opinion that a compact like the Declara- "tion of Paris, to which a great maritime power has refused to "be a party, may, in the event of hostilities, produce complica- "tions highly disastrous to British interests. As matters stand, "England is under all the disadvantages of the want of reciprocal "pledges on the part of the United States to refrain from pri- "vateering, or from the attempt to break a blockade, which, as "heretofore, a sense of self-preservation might compel Great "Britain to establish; while Powers so unpledged, urged by "every motive of self-interest, would be in a position to inflict

'the deepest injury upon British interests, under the same "unjustifiable pretences as were put forth during the war at "the commencement of the present century."

Two years later (on 17th March, 1862) Mr. Lindsay, speaking in the House of Commons, said:

"Let them suppose that unhappily we were at war with France. "In that case let us ask the question, would we require our large "ships to protect our ships and commerce on the seas? No! "for the simple reason that all our commerce would be conveyed "from this country under neutral flags. No sane merchant "would ship in any other than American or other neutral "bottoms, so long as there was a remote danger even of British "ships being captured. The result would be that all British ships "would be laid up in port or sold to neutral nations."

In the same debate Mr. John Bright said:

"The mercantile ships of England and France would then be "shut up, and the neutrals would be driving a trade more "flourishing than they had ever had before . . . we should have "the mercantile navy of both countries shut up, to the absolute "ruin, for a time and permanently, of some of the shipowners of "both countries. If anybody doubts this, I think they may take "the opinions of the Liverpool Chamber of Commerce" (*Han-"sard*, 1862, vol. clxv, pp. 1362, 1601, 1615, 1629, 1659).

And seven years later (on 5th August, 1867) Mr. John Stuart Mill said:

"Our whole export and import trade would pass to the neutral "flags; most of our merchant shipping would be thrown out of "employment and would be sold to neutral countries, as hap-"pened to so much of the shipping of the United States from the "presence of two or three, it might almost be said of one cruiser. "Our sailors would naturally follow our ships, and it is by no "means certain that we should regain them even after the war "was over" (*Hansard*, 1867).

The Transfer of Merchant Vessels to Neutrals in Time of War.

It has been suggested that a transfer of merchant vessels from a belligerent to a neutral in time of war is not lawful and would not be recognized; but there is no foundation for such a suggestion. It is the exact contrary that is true, both as to the law and the practice.

That the *bonâ fide* transfer (however motived) of merchant ships from a belligerent to a neutral is lawful, and that it must be and always has been recognized, whether the vessel be at the moment of transfer in a port of the belligerent or in a port of the neutral (though not necessarily if she be *in transitu flagrante bello*), is affirmed by such jurists as Lord Stowell, Dr. Lushington (the "Johanna Emilia"), Phillimore (vol. iii., pp. 735-739), and the Privy Council.

How, indeed, could a belligerent pretend to forbid neutrals from trading with the other belligerent for ships, unless he were also prepared to forbid them from trading with him for everything else as well?

That such a transfer is not only lawful but is actually practicable and capable of being made in a very wholesale manner is shown by the fact that, during the American Civil War, 715 United States vessels, aggregating 480,882 tons, were transferred to the British flag alone during the four years 1861-1864; and that on 7th April, 1865, Mr. Adams wrote: "The United States commerce is rapidly "vanishing from the face of the ocean, and that of "Great Britain is multiplying in nearly the same

"ratio." The point is sufficiently important however to warrant the following extract from Phillimore's *International Law* (vol. iii. chap. cccclxxxvi).

PHILLIMORE'S INTERNATIONAL LAW. § 486.

IN respect to the transfers of enemies' ships during war it is certain that purchases of them by neutrals are not, in general, illegal; but such purchases are liable to great suspicion; and if good proof be not given of their validity by a bill of sale and payment of a reasonable consideration, it will materially impair the validity of the neutral claim;[1] and if the purchase be made by an agent, his letters of procuration must be produced and proved;[2] and if after such transfer the ship be employed habitually in the enemy's trade, or under the management of a hostile proprietor, the sale will be deemed merely colourable and collusive.[3] But the right of purchase by neutrals extends only to merchant-ships of enemies;[4] for the purchase of ships of war belonging to enemies is holden to be invalid;[5] and a sale of a merchant-ship, made by an enemy to a neutral during war, must be an absolute unconditional sale.[6] Anything tending to continue the interest of the enemy in the ship, vitiates a contract of this description altogether. The property so transferred, that is, by purchase from the enemy, must be *bonâ-fide* and absolutely transferred; but in 1857 the Privy Council held that liens, whether in favour of a neutral on an enemy's ship, or in favour

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[1] The "Bernon," 1 Robinson, *Adm. Rep.*, p. 102. The "Sechs Geschwistern," 4 *Ibid.*, p. 100.

[2] The "Argo," *Ibid.* p. 158. "Que tout vaisseau qui sera de "fabrique ennemie, ou qui aura eu originairement un propriétaire "ennemi, ne pourra être censé neutre, s'il n'en a été fait une "vente pardevant les officiers publics qui doivent passer cette "sorte d'actes, et si cette vente ne se trouve aborde, et n'est "soutenue d'un pouvoir authentique donné par le premier pro-"priétaire, lorsqu'il ne vend pas lui-même."—*Règlement du* 17 *Février*, 1694; *du* 12 *Mai*, 1698.

[3] The "Jemmy," 4 *Ibid.*, p. 31.

[4] The "Minerva," 6 *Ibid.*, pp. 396, 399.

[5] *Ibid.*, p. 396.

[6] The "Packet de Bilboa," 2 *Ibid.*, p. 133. The "Noydt Gedacht," 2 *Ibid.*, p. 137, note a.

of an enemy on a neutral ship, are equally to be disregarded in a Court of Prize:[1]

Their Lordships of the Privy Council said as follows:

"The general rule is open to no doubt. *A neutral, while "war is imminent, or after it has commenced, is at liberty to pur- "chase either goods or ships (not being ships of war) from either "belligerent, and the purchase is valid, whether the subject of it be "lying in a neutral port or in an enemy's port.* During a time of "peace, without prospect of war, any transfer, which is sufficient "to transfer the property between the vendor and the vendee, is "good; also against a captor, if war afterwards unexpectedly "break out. But, in case of war, either actual or imminent, this "rule is subject to qualification, and it is settled that in such case "a mere transfer by documents, which would be sufficient to bind "the parties, is not sufficient to change the property as against "captors as long as the ships or goods remain in transitu.

"The only question of law which can be raised in this case is "not whether a transfer of a ship or goods in transitu is in- "effectual to change the property, as long as the state of tran- "situs lasts, but how long that state continues, and when and "by what means it is terminated.

"In order to determine the question, it is necessary to consider "upon what principle the rule rests, and why it is that a sale "which would be perfectly good if made while the property was "in a neutral port, or while it was in an enemy's port, is in- "effectual if made while the ship is on her voyage from one "port to the other. There seem to be but two possible grounds "of distinction. The one is, that while the ship is on the seas, "the title of the vendee cannot be completed by actual delivery "of the vessel or goods; the other is, that the ship and goods "having incurred the risk of capture by putting to sea, shall not "be permitted to defeat the inchoate right of capture by the "Belligerent Powers until the voyage is at an end.

"The former, however, appears to be the true ground on which "the rule rests. Such transactions during war, or in contempla- "tion of war, are so likely to be merely colourable, to be set up "for the purpose of misleading or defrauding captors; the diffi- "culty of detecting such frauds, if mere paper transfers are held

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[1] The "Ariel," 11 Moore, *P.C. Rep.* 139, one of what were called the "Sorensen" cases, p. 140, note.

"sufficient, is so great, that the Courts have laid down as a "general rule that such transfers, without actual delivery, shall "be insufficient; that in order to defeat the captors, the pos- "session as well as the property must be changed before the "seizure. It is true that in one sense the ship and goods may "be said to be in transitu till they have reached their original "port of destination; but their Lordships have found no case "where the transfer was held to be inoperative after the actual "delivery of the property to the owner."

The cases of the "Danckebaar Africaan,"[1] the "Negotie en Zeevart," the "Vrow Margaretha," and Mr. Justice Story's *Notes on the Principles and Practice of Prize Courts*, p. 64, were then cited, and their Lordships continued:

"Applying these rules to the facts of this case, their Lordships "can have no doubt as to the result.

"The 'Baltica' sailed from Libau on some day before the "17th of March, 1854 (N.S.), with a cargo of linseed bound for "Leith. On the 17th of March she was transferred by bill of "sale (as far as, under the circumstances, such transfer could be "effectual) to Sorensen, junior. She was described as then on a "voyage from Libau to Copenhagen. Probably she was intended "to call at Copenhagen in the prosecution of her voyage to Leith. "There does not seem to have been any motive for misrepresent- "ing her voyage, for her ultimate destination was an English "port. She arrived at Copenhagen before the end of March, "and possession of her was then taken by Sorensen, junior, the "purchaser. He had her registered as a Danish ship, and she "was marked as such by the proper Danish authorities. He "detained the ship at Copenhagen till the middle of May. He "changed the captain and the crew and the flag, and transferred "the command to a Danish master; and under a Danish com- "mander and with a Danish crew, and under the Danish flag, "the vessel sailed from Copenhagen for Leith, on the 21st of "May.

"There can be no manner of doubt, therefore, that at this time "the ship had come fully into the possession of the purchaser, "and thereupon, according to the principles already referred to, "the transitus, in the sense in which, for this purpose, the word "is used, had ceased.

"But if it could be held that the transitus continued till the

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[1] 1 Robinson, *Adm. Rep.*, p. 107.

"arrival of the ship at Leith, the result in this case would be the "same, for the ship actually arrived in Leith roads on the 29th "of May. On the 31st of May she was towed into Morison's "Haven in that port, where her cargo was discharged, which, it "seems, has since been given up to the consignee with the con- "sent of the Custom-House officers.

"A seizure, however, was made of the ship, on what particular "day does not very distinctly appear, but clearly after she had "arrived at her port of destination.

"No distinction, therefore, can be made between the 'Baltica' "and the other ships which have already been restored. Their "Lordships will report to Her Majesty their opinion that the "same order should be made in this case as was made in the "'Ariel': an order for restitution, but without damages or costs "either in the Court below or in the Court of Appeal."

CHAPTER XV.

The Declaration of Paris not irrevocable.

It is held by some that, whatever may be the vices of the Declaration of Paris, it is immutable and irrevocable under any circumstances ; and by others, that it is not revocable unless with the consent of all the signatory Powers.

This is to make a claim for a Declaration having none of the solemn marks of authority that distinguish treaties, wider than is made even for Treaties themselves. There is not an important Treaty of modern Europe, from that of Utrecht of 1713 downward, but has been partially denounced, revoked and altered. The Treaties of Vienna of 1814, the Treaties of Paris of 1856, the Treaty of Prague of 1866, the Treaty of Berlin of 1878, have all been in part or in whole denounced; and acts have been done or forborne by parties to them—even though such acts were at first denounced and opposed by other parties to them—in flagrant derogation of their provisions. It is only necessary to instance in illustration the Black Sea Clauses of the Treaty of Paris and the Batoum Clause of the Treaty of Berlin, both which were openly and frankly denounced and repudiated by Russia, in her own sole interest, with the result that the denunciation and repudiation were accepted by all Europe. That so much less solemn a document as the Declaration might be, with due

warning and in time of peace, repudiated, seems to admit of no question. It has never been, and is not now a uniform doctrine, it has never been universally accepted, and it is therefore to this day no part of the Law of Nations, but only a new and exclusively conventional view of a portion of that law as "declared" by certain States. Thus Hall says, "*the provisions of* "*the Declaration of Paris cannot in strictness be said* "*to be at present part of international law*, because "they have not received the adherence of the United "States." And again he says, "*the terms of the* "*Declaration are not authoritative law*," and yet again: "the freedom of enemy's goods in neutral vessels is "not yet secured by an unanimous act, or by a usage "which is in strictness binding on all nations."[1]

We have seen Russia tear up, in 1870, the Black Sea clause of that very Treaty of Paris, the Conference on which led to this very Declaration; and had the Declaration formed part of the Treaty it must have disappeared with the infraction of that part of it. For assuredly if the principal clause of a solemn Treaty, made with full powers and duly ratified, may be repudiated, much more may a Declaration thereto appended, made without powers and never ratified. We have seen that same Russia, which was a party to the Treaty of Berlin in 1878, repudiate in 1886 Article LIX. of that Treaty, which stipulated that Batoum should be a "free port essentially com- "mercial," and repudiate it with a cynicism and under circumstances which caused Lord Rosebery to stigmatize the repudiation as "an infraction of the "Treaty of Berlin of which indeed it obliterates a "distinct stipulation," and to protest against it in

[1] *Rights and Duties of Neutrals*, by W. E. Hall, M.A. London, 1874, pp. 13, 135, 143.

these words: "H.M. Government cannot consent to "recognize or associate themselves in any shape or "form with this proceeding of the Russian Govern- "ment. They are compelled to place on record their "view that it constitutes a violation of the Treaty of "Berlin unsanctioned by the Signatory Powers, that "it tends to make future conventions of the kind "difficult, if not impossible, and to cast doubt at "least on those already concluded."[1]

There is indeed not one of the great modern treaties of Europe but has been openly repudiated in some essential parts by some interested Power. They have all suffered violation in some of their essential features. And if treaties may be and have been thus repudiated, much more may a Declaration be repudiated which is no Treaty at all, nor part of a treaty, which is self-contradictory on the face of it, and of which the proposed partial repudiation has already been repeatedly announced by other Powers than Great Britain who were parties to it.

Moreover this was not the only Declaration made at Paris in 1856. There was another, to the full as important and to the full as binding, which has been persistently despised and violated ever since it was made. At the sitting of the Conference of 14th April, 1856, the Plenipotentiaries "do not hesitate "to express in the name of their Governments, the "desire that States between which serious discus- "sions may have arisen, shall, before appealing to "arms, have recourse, so far as the circumstances "admit, to the good offices of a friendly Power." This declaration, which was adopted immediately before the Declaration of Paris usually so called, has

[1] Parliamentary Papers. Russia I., 1886.

never since had the least attention paid to it, or ever been of the slightest effect, although invoked and appealed to by England on the outbreak of each of the great wars of 1859 and 1870 that broke out after it was promulgated.

The moralists and the publicists, who disagree on many things, are agreed at least as to this; that even solemn treaties made with full powers and bearing all the marks of authority, may under certain circumstances be set aside. "When adherence to a "Public Treaty" (says Paley in his *Moral Philosophy*) "would enslave a people, or deprive it of those com- "mercial advantages to which its situation and other "circumstances entitle it, the magnitude of the par- "ticular evil induces us to call in question the obliga- "tion of the general rule." So, too, says Hume, and so also, but more strongly, De Martens, Mommsen, Ferreirà, and Spinoza. So also Vattel (Book II. cap. 12), "Since, in the formation of every treaty, the "contracting parties must be vested with sufficient "powers for the purpose, a treaty pernicious to the "State is null, and not at all obligatory, as no con- "ductor of a nation has the power to enter into "engagements to do such things as are capable of "destroying the State, for whose safety the govern- "ment is intrusted to him."

Since then no treaties are absolutely irrevocable, and since every modern Treaty has been treated as revocable on due occasion, and has actually in part or in whole been repudiated or revoked, there can be no character of absolute irrevocability attaching to a document so much inferior to a Treaty as the Declaration of Paris.

Nevertheless, though revocable, the Declaration of Paris should not be held to be more lightly revocable

or upon less grave grounds, than a convention of a more formal and complete character. For if, on the one hand, it lacks the sanction and solemnity of a formal treaty ; if there was admittedly no adequate authority on the part of the British Plenipotentiaries to sign it; if, in addition it has never been, nor after four and forty years is any nearer to becoming a uniform doctrine; and if it has never been ratified by the sovereign—yet there is the fact that it has been tacitly accepted by Great Britain ever since 1856, that Parliament, though it has never expressly approved it, has more than once refused to condemn it, and that in the eyes of all nations it is of lasting obligation on Great Britain, whatever it may be as regards themselves. In these circumstances it would ill become Great Britain to repudiate the obligation on the ground alone of its lack of authority or formality. Upon other grounds than these must the repudiation be made if at all. But if it be that the effect of the declaration is such as, in time of war, practically to deprive Great Britain of her power of offence at sea, seriously to impair her power of defence, and to inflict a disastrous injury upon her carrying trade, then the ground exists. It would be on the ground of the necessity for using her power of self-protection, for resisting her own destruction, for guarding her own very existence that the repudiation would be made—a ground which, if it be established, would suffice for the repudiation of the most sacred and solemn of all treaties, and much more for the repudiation of this casual unauthorized self-contradictory Declaration.

Impossibility of Repudiating the Declaration on the Outbreak of War.

It may perhaps occur to some that it would suffice for Great Britain to let the Declaration be where it stands on its own inherent baselessness, and simply to disregard it whenever war may arise.

That, however, would be a course immoral, unjust, dangerous, and only worthy of a Power devoid of faith.

By this Declaration Great Britain is equitably and in honour bound, unless and until it is formally repudiated. Its informality, its want of authority, its falsehood in fact and in principle, are of the highest importance to be kept in view, because they allow and even invite its repudiation in time of peace; not because they would excuse its repudiation in or on the outbreak of war.

Moreover, to repudiate it on the outbreak of war would be practically impossible.

Conceive a British Cabinet, on the eve of a European war, taking account of its means of offence and defence, and considering how it could add to them. It would be at the outset brought face to face with the fact that while England cannot put armies in the field to vie with those of the Continent, neither can she now so use her Navy as to exercise any material coercion thereby upon a Continental Power. In a war with England, such a Power would, indeed, run great risk of losing its distant colonies, if it had any, but it would now no longer run the risk of having its Supplies stopped and the price of all articles of consumption imported by sea raised upon

it, as was inevitable, and as actually occurred, in any war with England before the Declaration of Paris was signed. Nor would a Power at war with England now run the risk of seeing the exportation stopped of its own produce and property. The enemy's commerce, however unable he might be to protect it—and the more certainly the more unable he was—would traverse the seas in safe impunity under the neutral flag, and could not be touched. He would, indeed, have to face the certain loss of all his own carrying trade—which, however, compared with that of Great Britain would be but small in the greatest case—but he would not be exposed to the loss of his merchandise, all of which, except contraband of war, would be as freely carried as in time of peace to or from all of his ports not actually and forcibly blockaded. His navy therefore would have nothing to defend on the seas; and since navies, like armies, fight not for mere glory but to produce material results on the war, it need never leave his ports, as was indeed the case with the German Navy in 1870-71, when the magnificent French fleet found itself unable to strike a blow for the national interests. Even blockade by the British Navy, however close and effectual, would produce no material effect on the enemy's commerce, for that (even if every one of the enemy's ports were blockaded, which is hard to conceive) would go by rail to or from some convenient neutral port and there be shipped or landed under the neutral bunting. Thus the Cabinet would find itself, in consequence of the Declaration of Paris, without the smallest hope of producing the smallest material effect on the enemy by the use of the British Navy.

On the other hand, it would have to face the

immediate loss of a great part if not of all the British carrying-trade. No shipper would be ready to ship a bale of merchandise in a British bottom, wherein it would be capturable, so long as there was available a neutral bottom in which it would not be capturable. The difference of insurance between war risk and no war risk would make that certain to occur on the first outbreak of war, which is the moment we are now considering. As the war proceeded, indeed, shippers and insurers would probably recover from their first alarm, and, in the absence from the seas of the enemy's navy, would resume shipping in British bottoms—provided that the first article of the Declaration stood the test of war as well as the second, and that no privateers were fitted out by the enemy. That this would be so, however, must be doubtful, and, in any case, a vast mischief must result at the outset of the war to the British shipowner—a mischief from which he might perhaps never recover. All these considerations the Cabinet would have to face; and yet another, besides, of no small moment—the risk of invasion. This risk would be appreciably increased by the new freedom from capture of the enemy's commerce; for the enemy's navy, being set free from the necessity to protect his commerce, could be kept in hand and in port, always threatening or seeming to threaten, that invasion of England, which even in time of peace can always be made to produce a fright, and which in time of war would create a permanent panic.

These are the reflections that must occur to every English Minister on the merest risk of war with any Continental State; they are the reflections which, ever since this fatal Declaration was signed, have always availed to make English Ministers feeble and

impotent to face the mere idea of war, and have forced them to submit to humiliation and injury in order to avoid war. The Declaration of Paris, in short, has acted (as it was intended to act by the Russian Empress who invented it) so as absolutely to paralyze the sole force of England and to make her cease to be counted in the councils of Europe.

Confronted once again, and now most urgently, by these reflections, what would be the first thought of a British Cabinet? With one enemy already on their hands, their main object would certainly be to avoid making others and to obtain allies for their country. But such allies could only be looked for among the neutral powers. But these neutral powers would (so long as the Declaration of Paris lasts) have the strongest interest in remaining neutral and refusing alliance with England—for they have been promised, in that case, a vast carrying trade to share between them, the carrying trade, certainly of the enemy, and possibly that of Great Britain herself, which means that of the world. The moment has now arrived to hand over this stupendous advantage to them—this immense bribe to them to avoid alliance with England (and therefore belligerency) and to adhere to neutrality. Is this the moment that any English Minister seeking allies would take in order to withdraw the advantage, to resume the bribe with one hand, while with the other he beckoned for alliance and assistance from the very Power or Powers thus dealt with?

Can an English Minister be conceived of capable of saying then in that situation, "You are a neutral "Power. I desire your alliance against my enemy. "We have undertaken, ever since 1856, that when "this present situation should arise, you should have

"the carrying trade of the world to divide between "you and other neutrals. The situation having "arisen, I must tell you, on the one hand, that I am "going to repudiate what I have undertaken in this "respect, that I am going to refuse you that tre- "mendous bribe; and at the same time I ask for "your alliance and assistance in this deadly struggle"? It is not conceivable; and if it were conceivable, and were done, what would that terrible Opposition say and do? What would be the effect on European opinion, on our old friends the "Influences of Civilization," or, more important than all, on the credit and the votes of the Ministry?

Assuredly such language could not be held, such a course could not be so much as entertained.

The one moment when the Declaration of Paris cannot be repudiated, the one moment when no attempt to repudiate it could properly be made, is on the eve of an imminent war. If it is to be repudiated, as it must be unless Great Britain is to remain deprived of her chief offensive power in war, and as it can be consistently with all laws and all morality, it must be in time of peace and with due notice to all concerned.

The Declaration can be Repudiated in Time of Peace.

The Declaration can be repudiated; it cannot be ignored. Whatever may be its want of authority, still it was signed with an affectation of authority by an English Secretary of State and an English Ambassador. By all therefore, except by those who would have Great Britain emulate certain other Powers in tearing up all engagements when it suits

her and when circumstances give her the power to do it, this Declaration must be accepted as being at present binding on Great Britain.

But though it is binding it is not irrevocable. The act that was done in the dark without authority may be undone in the day with authority. It is absolutely within the competency of the Crown, either of its own proper motion, or moved thereto by an Address from the Houses of Parliament, to declare that the Declaration of Paris is no longer accepted by it as the rule of maritime warfare, and thus to revert to the common rights of all warfare. But until the act of the two Plenipotentiaries who assumed to sign on behalf of Great Britain in a matter beyond their powers shall have been undone by a formal denunciation of the Declaration, and the Declaration itself openly declared to be no longer binding, so long must it and will it be binding on Great Britain.

CHAPTER XVI.

Objections to the Resumption of Maritime Rights by Great Britain Considered.

An Infinitesimal Gain—An Immeasurable Loss.

One advantage, indeed, Great Britain gains, under certain circumstances and in certain times, from the Declaration of Paris. She gains the carrying trade of any nations which may be belligerent and exposed to maritime attack, while she remains neutral. But this gain is very small. The carrying trade of other nations is already to a large extent carried on for them by British vessels, and that additional trade which she can gain from any one other state is therefore but a small and comparatively insignificant addition to that which she already has. What there is to be gained, however, she gains; but on the other side of the account must be put that which she must lose when she herself becomes belligerent. That loss may probably amount to a large part or even to the whole of her own carrying trade, which is more than all that she could gain from other nations during a century of wars. And there is this further about it, that, while the infinitesimally small gain Great Britain may make as a neutral is made in times of prosperity, she must sustain an immeasurably greater loss as a belligerent in times of extremity. There can be no advantage in this.

The Fallacy of the Argument that the Changes in the Conditions of Seafaring render the Declaration advantageous to Great Britain.

Another set of arguments, if arguments they can be called, in favour of the Declaration of Paris, is founded upon the change in the conditions of naval warfare resulting from the employment of steam and armour. This change, it is said, places Great Britain at a disadvantage, as compared with other nations, in fighting a conflict at sea. It is only necessary to say in answer to this that Great Britain has profited far more than any other nation by steam and armour; that all other nations are compelled to take lessons from her in both, or even to come to her to provide them, and that, therefore, whatever advantage she may have had before their introduction is very greatly increased since.

Those who affect to believe that the changes resulting from the use of steam have been disadvantageous to Great Britain can only entertain such a belief on condition of absolutely ignoring the facts. As might with certainty have been predicted, Great Britain has become far more marked in her superiority, relatively to the rest of the world, since the introduction of steam than ever she was before. Every material improvement in the construction of iron vessels and of marine engines has been first conceived and carried out in this country, which, in all the latest improvements is still far ahead of all other nations, and which in all future improvements must probably remain so. It was here that Steel was first introduced in 1876 as a substitute for Iron in shipbuilding; here that Steel has driven out Iron as

Iron drove out Wood; here that Steel can best if not alone be made for the purpose. Here, too, it is that triple and quadruple expansion have been introduced, together with numberless minor improvements which during the thirty-seven years that have elapsed since 1863, have reduced the consumption of coal by three-quarters and quadrupled the efficiency of the marine engine. In consequence of these improvements the speed of Atlantic liners has been increased from the 8½ knots of the "Britannia" in 1840, to the 22½ knots of the "Oceanic" in 1899, and the time taken to steam across the Atlantic has been successively reduced from fifteen days in 1838 to nine days in 1874, and now, in 1900, to under seven days. These results are all due to improvements invented and carried out in Great Britain, and incapable at present of being worked out elsewhere. The advantage therefore still lies with us; it lies more with us than ever it did; and the relative advantage is greater than ever it was. So true is this, that in the year 1887 our shipbuilders, while building 306,719 tons of shipping for Great Britain and her colonies, built, at the same time, as many as 70,479 tons for foreigners,[1] while in 1898 they built for Great Britain and her possessions 695,997 tons, and at the same time as many as 174,611 tons for foreigners, thus supplying nearly one fourth of the whole immense tonnage built, to foreign nations, who, in spite of bounties and every kind of artificial encouragement to their own shipbuilders, were unable to get these vessels built elsewhere than in Great Britain.

These facts suffice to show that all the advant-

[1] Tables showing the Progress of British Merchant Shipping, issued by the Board of Trade, 4th June, 1888. See, too, c. 9315 of 1899.

ages of all the changes that have been made in the methods of navigating the seas have been, to a largely predominating extent, on the side of this country, and that each successive improvement has left her farther ahead than ever of any and all other countries. The contrary could, indeed, only have been ever believed by those whose desire to believe it was stronger than their knowledge of the facts was complete.

The Fallacy of the Sacred Private Property Argument.

There are indeed some who have not hesitated to assert that Great Britain would gain by carrying still further the renunciation of belligerent maritime rights; and who assert that it would be to her advantage to accept and adopt the principle that all "private property" whatever (including even contraband of war) shall be exempt from capture at sea; that is to say, shall be exempt from all effects of warfare.[1] This is indeed a logical conclusion for those to leap to who feel that the Declaration of Paris cannot be defended as it stands. But it is a conclusion none the less monstrous in itself. Those who advance it may properly be required to consider the nature of war, and to say how or upon what possible principle there can be at one and the same time a national war and a commercial peace; upon what possible ground exemptions can be claimed for private property at sea not extended to it on land; and upon what conceivable theory of the State it should be required to permit even its own subjects to

[1] *Edinburgh Review* for October, 1876, and Mr. Lindsay's lecture U. S. Institute, 1877.

supply its enemies with arms and munitions of war to be used against it. Till these questions are satisfactorily answered, it would be idle to discuss the principle of this proposed new and further innovation. But the effect such an innovation would have would be monstrous indeed. Even the Declaration of Paris leaves enemy's property in enemy's ships liable to capture; this would relieve it from that liability: even the Declaration of Paris leaves contraband of war in neutral ships liable to capture; this would relieve it from that liability; and we should have in all wars the monstrous spectacle of soldiers and sailors destroying each other while their own fellow-countrymen were furnishing to their enemies the instruments of their destruction. A State, so far removed and isolated from other nations, and so unlikely ever to be at war with them, as to be able to look for profit alone in their wars without having to fear any, even the remotest, possibility of becoming itself involved in war, might perhaps hold such a condition of things to be advantageous to it; or a purely military State, unable to defend or to carry on its sea-borne commerce during war, might gain by it; but for a maritime country to agree to it would be the height of madness.

CHAPTER XVII.

The Resumption of Maritime Rights and Neutral Powers.

Among the arguments used by those who have opposed the withdrawal by Great Britain from the Declaration of Paris and her resumption of her ancient Maritime Rights are these: (1) That the exercise of these rights was and would be again most onerous and intolerable to neutrals; (2) that the exercise of these rights would involve "the right "of taking by cruisers" enemy goods "out of" neutral vessels;[1] (3) that it would mortally offend the Neutral Powers; (4) that those Neutral Powers would never endure to have their vessels stopped and searched on the high seas for enemy goods; and (5) that especially the United States would never endure it.

Such arguments can only be used by the ignorant or the inconsiderate. The reply to them is simple.

(1) The exercise by the belligerent of the right to Visit and Search, and, if cause appears, to detain and to take into port for adjudication a neutral vessel, is so far from being onerous and intolerable to the neutral, that it involves for that neutral vessel no material damage, and no more than an inconvenience which need not necessarily be great. For though the enemy goods, if any, would be adjudged

[1] *Edinburgh Review*, October, 1876, p. 359.

good Prize by the Court, and be confiscated, yet the ship herself would be released and her freight and expenses paid;[1] while if the Prize Court decided that the alleged enemy goods were not really of that

[1] "And first, in respect to neutral ships. It has been ruled "that in general, where enemy's goods are captured in a neutral "ship, the captors take *cum onere;* and if the conduct of the "neutral has been perfectly fair and impartial, it is the practice "of the Prize Court to allow him his full freight, in the same "manner, as if the original voyage had been performed; and in "like manner, to allow him his expenses. The freight allowed is "not, however, necessarily the rate agreed on by the parties, if it "be inflamed by extraordinary circumstances; but a reasonable "freight only will, in such cases, be allowed. And where the "goods have been once unlivered by order of Court, the whole "freight for the voyage is due, and the owner of the goods, even "in case of restitution, cannot demand the ship to reload them "and carry them to the original port of destination, for by the "separation the ship is exonerated; but it would be otherwise if "there had been no unlivery. And the neutral will be allowed "his freight where he carries the goods of one belligerent to its "enemy; for though such a trade be illegal as to the subjects, it "is not so as to neutrals. So, on a voyage from the port of "one enemy to the port of another enemy. But if the neutral "has conducted himself fraudulently or unfairly, or in violation "of belligerent rights, he will not be allowed freight or expenses, "and, in flagrant cases, will be visited with confiscation, even of "the ship itself. And he is never allowed freight where he has "used false papers; nor upon the carriage of contraband goods; "nor where there has been a spoliation of papers; nor where the "cause of capture was the ship and not the cargo. But where "part of the goods are condemned as contraband, and part "restored after unlivery of the cargo, freight may be decreed as "a charge upon the part restored. If the goods are unlivered "under a hostile embargo upon neutral ships, they are discharged "of the lien of the freight; and if freight be decreed, it can only "be against the original consignees or freighters, and not against "a prior purchaser, who has received them on bail."—*Commentaries upon International Law*, by Sir Robert Phillimore, D.C.L., London, 1873, Articles 498 and 499.

character, then not only must the ship be released, but she would also obtain costs and damages against the captor. There is surely nothing onerous, still less intolerable, in this.

(2) The allegation that a cruiser has the right, herself, and without any adjudication, to take enemy goods out of a neutral vessel, can only be made out of complete ignorance or equally complete ill-faith. If there were such a right, no doubt its exercise would be onerous and intolerable enough. But there is no such right, nor ever was such practice. The right of the cruiser extends only to detaining and taking in for adjudication, at the risk, if the detention is unlawful, of having herself to pay costs and damages. She has no more the right to take enemy goods without judgment of a Court, than a constable has the right to hang a man whom he has apprehended on suspicion of being a murderer.

(3) That the exercise of the right of bringing neutral vessels in for the judgment of a Prize Court, and of confiscating all enemy goods, adjudged to be such, by that Court, would offend the Neutral Powers is possible, but not likely. For the right is one that was exercised for at least eight hundred years, and it is a right not only fully admitted, but strongly asserted by the common Law of Nations, to which neutrals and belligerents alike and alone appeal. Moreover, resistance to the right involves a claim on the part of the neutral to carry on for the belligerent a trade he can no longer carry on for himself, and thus to give him aid and in effect to take a part in the war. Besides which a Neutral Power must always remember that it may, any day, itself become involved in war, and that the exercise of this right may then become as important to itself as to the

present belligerents. And, finally, the right is of such vital importance to the belligerent—and most especially to a belligerent whose chief power is on the sea—that it would be better to risk giving some offence to the neutral than to forego so potent a means of distressing the enemy, and of bringing to a conclusion a war which may involve the national existence.

(4) The pretence that Neutral Powers would not endure to have their vessels stopped and searched on the high seas for enemy goods, as was done before the Declaration of Paris was signed, and as would be done again if that Declaration were repudiated—this pretence is transparently futile. To stoppage and search on the high seas in time of war all neutral vessels always have submitted, always do submit, and always must submit without question. Declaration or no Declaration, the Right of Visit and Search on the high seas in time of war must subsist untouched and intact; otherwise there would be no means of verifying the character of a vessel, her nationality, her destination, or the innocent nature of her cargo. Neither is there anything of any importance to endure. If the Visit and Search show no probable cause of capture, the detention of the neutral vessel by the visiting and searching cruiser will not exceed an hour or two at most. There is no intolerable grievance in this, nor has there ever been felt to be any.

(5) To say that the United States, of all Powers in the world, would, when neutral, refuse to endure the exercise of acknowledged belligerent rights, is to show a strange disregard of the history of that country. By no other State has more respect been professed for, or a stricter adherence been shown to,

the Law of Nations; and by no other has belligerent rights, whether ashore or afloat, been more fully exercised as the necessities of war dictated, according to the particular character of the war. In the "Trent" affair, when their cruiser went beyond his lawful authority by "taking out" the Confederate ambassadors, of his own sole fiat, and without judgment and adjudication, they restored the ambassadors, thus showing at once their readiness to use belligerent rights to their full limits, and their equal readiness to make amends when they had pushed them beyond those limits. Moreover, the United States (for what reasons, real or alleged, is here of no consequence) have always refused to adhere to, and are at this moment not bound by the Declaration of Paris; they have consequently retained intact and unimpaired all the belligerent rights now in question, and it is beyond all reason and probability to suppose that they, of all nations, would resist the exercise of the rights which, even when waived by others, they at least have never abandoned, and which have been consistently and persistently affirmed by their publicists, and enforced by their Courts.

The United States and the Declaration of Paris.

In spite of the fact that the United States have refused up to this day to become a party to the Declaration of Paris, it is to this day constantly suggested that the United States are strong advocates of the principles embodied in the Declaration, and it has been repeatedly declared that a repudiation of those principles would meet with the strongest opposition from the United States. That Power, it is alleged, would,

if neutral, resist, even by force of arms, the capture by one belligerent of the property of the other belligerent in United States vessels, would resist even the visit and search of such vessels, and would, if necessary, declare war in support of its resistance, against any belligerent which persisted in such visit, search or capture. This allegation has, indeed, been always put forward as one of the strongest arguments against the repudiation of the Declaration by England, since, as is suggested, it would bring upon England the resistance and the enmity of a Power with whom, on every ground, it should be her foremost object to remain in friendly relations.

The mere fact that the United States have, during the four and forty years that have elapsed since the Declaration of Paris was signed, abstained from becoming a party to it should, of itself alone, suffice to show that that Power is by no means so anxious as is pretended, to become bound to the four indivisible articles of the Declaration. But this fact has not, so far, availed to convince those who affirm that the United States would affirm, even by force, the principles of a Declaration which no United States government has yet been found ready to agree to.

There is, however, much more than this. There is President Jefferson's eloquent defence of that Privateering which the first of the four articles of the Declaration declares "is and remains abolished," and his demonstration that by the employment of Privateers alone can "the whole naval force" of the United States be "truly brought to bear on the foe." Such a view of the matter is wholly inconsistent with the adoption of the principles involved in the Declaration.

There is still more as to the attitude of the United

States towards the second article of the Declaration, which affirms the principle that the neutral flag covers the cargo, except contraband of war. As to this the United States have never varied. They have always desired that the principle should be affirmed; they have never admitted that it could or should be affirmed as a general principle of the Law of Nations. They have always in practice repudiated it. Their Prize Courts have invariably denied it, and have as invariably enforced the contrary principle, that the neutral flag does *not* cover the cargo. They have indeed, in special cases, and for special reasons, made special conventions agreeing to recognize the new principle as between themselves and some one other nation—as by their treaty with France of 1778, and their treaty with Italy of 1871; but they have always upheld the doctrine that those special conventions in no way touched the General Law of Nations, and that where there was no convention, that General Law sanctioned the capture of enemy's property under the neutral flag. To suppose, therefore, that the United States would resist a return, on the part of England, to the principles which they themselves have always refused to abandon, which their own practice has always sanctioned, and which their own Prize Courts have invariably affirmed and enforced, is to suppose that which is contrary to all reason and all probability.

In order to make good the account above given of the attitude held and the action pursued by the United States in this respect, the following extracts are made from that most able and authoritative American publicist and text-writer Wheaton, as annotated by the scarcely less able and approved Dana.

First, then, the United States Courts have always affirmed that, by the general Law of Nations, and apart from special conventions between particular nations which may modify it in special cases, as between those particular nations themselves, free ships do *not* make free goods; and her statesmen and diplomatists have always concurred in that affirmation.

"The United States and Great Britain have long stood committed to three points, as, in their opinion, established in the "Law of Nations: (1) That a belligerent may take enemy's "goods from neutral custody on the high seas; (2) That "neutral goods are not subject to capture from the mere fact "that they are on board an enemy's vessel; and (3) That the "carriage of enemy's goods by a neutral is no offence, and, consequently, not only does not involve the neutral vessel in "penalty, but entitles it to its freight from the captors, as a "condition to a right to interfere with it on the high seas. "Great Britain has sustained these rules by uniform judicial "decisions, and by the concurrent opinions of her leading text-"writers."[1]

"While the government of the United States has endeavoured "to introduce the rule of 'free ships, free goods' by con-"ventions, *her courts have always decided that it is not the rule of "war;* and her *diplomatists and her text-writers*—with *singular "concurrence, considering the opposite diplomatic policy* of the "country—*have agreed to that position.*"[2]

"During the war which commenced between the United "States and Great Britain in 1812, the *Prize Courts of the former "uniformly enforced the generally acknowledged rule of inter-"national law, that enemy's goods in neutral vessels are liable to "capture* and confiscation, except as to such powers with whom

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[1] Phillimore's *Intern. Law*, iii. 161-212; Manning's *Law of Nations*, 203-280; Wildman's *International Law*, ii. 136.

[2] Kent's *Comm.*, i. 124-130; Halleck's *Intern. Law*, 632-635; and Woolsey's *Introd.*, 170; Wheaton's *Elements of International Law*, with notes by R. H. Dana, London, 1866, Notes to Article 475.

"the American government had stipulated by subsisting treaties "the contrary rule, that free ships should make free goods."[1]

Surely this is as conclusive as anything can be, in regard to the first point.

Secondly, the suggestion that the United States would resist the exercise of the right, always approved by their Courts and statesmen, of a belligerent to capture enemy's property in neutral American vessels is so directly opposed to all previous experience of their action, that, if that action be examined, it will be found that it was the denial of that right which they have resisted, thus:

"The desire of establishing universally the principle, that "neutral ships should make neutral goods was felt by no nation "more strongly than by the United States. It was an object "which they kept in view, and would pursue by such means as "their judgment might dictate. But *the wish to establish a "principle was essentially different from an assumption that it is "already established. However solicitous America might be to "pursue all proper means tending to obtain the concession of this "principle by any or all of the maritime powers of Europe, she "had never conceived the idea of obtaining that consent by force.* "The United States would only arm to defend their own rights: "*neither their policy nor their interests permitted them to arm in "order to compel a surrender of the rights of others.*"[2]

"During the wars of the French Revolution, the United "States, being neutral, *admitted that the immunity of their flag "did not extend to cover enemy's property,* as a principle founded "in the customary law and established usage of nations, "though they sought every opportunity of substituting for it "the opposite maxim of *free ships free goods,* by conventional "arrangements with such nations as were disposed to adopt that

[1] Wheaton's *International Law,* with Notes by Richard Henry Dana, London, 1866, Art. 471.

[2] Letter of the American Envoys at Paris, Messrs. Marshall, Pinkney, and Gerry, to M. de Talleyrand, January 17, 1798; Waite's *State Papers,* iv. 38-47; Wheaton's *Elements of International Law,* London, 1866, Art. 455.

"amendment of the law. In the course of the correspondence "which took place between the minister of the French Republic "and the government of the United States, the *latter affirmed* "*that it could not be doubted that, by the general law of nations,* "*the goods of a friend found in the vessel of an enemy are free,* "*and the goods of an enemy found in the vessel of a friend are* "*lawful prize.* It was true, that several nations, desirous of "avoiding the inconvenience of having their vessels stopped at "sea, overhauled, carried into port, and detained, under pretence "of having enemy's goods on board, had, in many instances, in- "troduced, by special treaties, the principle that enemy's ships "should make enemy's goods, and friendly ships friendly goods; "a principle much less embarrassing to commerce, and equal to "all parties in point of gain and loss; but this was altogether "the effect of particular treaty, controlling in special cases the "general principle of the law of nations, and therefore *taking* "*effect between such nations only as have so agreed to control it.* "England had generally determined to adhere to the rigorous "principle, having in no instance, so far as was recollected, "agreed to the modification of letting the property of the goods "follow that of the vessel, except in the single one of her "treaties with France. The United States had adopted this "modification in their treaties with France, with the United "Netherlands, and with Prussia; and therefore, *as to those* "*powers, American vessels covered the goods of their enemies, and* "*the United States lost their goods when in the vessels of the* "*enemies of those powers.* With Great Britain, Spain, Portugal, "and Austria, the United States had then no treaties; and "therefore *had nothing to oppose them in acting according to the* "*general law of nations, that enemy goods are lawful prize though* "*found in the ships of a friend.*"[1]

Thus it will be seen that, although the United States had a special treaty with France of 1794 which stipulated that, as between themselves, "free ships make free goods," yet, that, when the French

[1] Mr. Jefferson's letter to M. Genet, July 24, 1793; Waite's *State Papers*, i. 134. See also President Jefferson's letter to Mr. R. R. Livingstone, American Minister at Paris, September 9, 1801; Jefferson's *Memoirs*, iii. 489; Wheaton's *International Law*, with notes by R. H. Dana, London, 1866, Art. 454.

appealed to them to resist the capture of French goods in American vessels by England, then at war with France, the Americans replied that they neither could nor would resist such capture, inasmuch as the right to make it was undoubted. Their conduct in this matter showed their respect for the Law of Nations even when it bore hardly upon themselves, and the assumption that they would show less respect for it now than they did then is as unwarranted as it is insulting.

The tremendous fact that a Power of so great and so increasing an importance as the United States has refused to this day to become a party to the Declaration of Paris, and that the very foundation and purpose of the Declaration (viz., to "establish a uniform doctrine") are thus cut away from it—this fact has always been recognized as one of deadly import to the Document itself, whether as regards its validity as professing to set up new rules of maritime warfare, or as regards the policy of accepting those new rules. The refusal—maintained to this day—of Spain, might, had it stood alone, have been treated with disregard or even with scorn; but the refusal of the United States and their continued maintenance of the old rules, are absolutely destructive of the Declaration itself, and reduce it at once from all its proud pretensions as an exposition of maritime law in general, to a mere convention between the signatory States for special rules as between themselves alone, similar in character and nowise superior in authority, to dozens of similar special conventions made and broken any time within the last two hundred years.

The apologists of the Declaration, sensible of the inextricable difficulty thus created for them, have endeavoured to explain away the refusal of the

United States to concur in the Declaration, by alleging that that Power would have concurred—had the Declaration been something else than what it was! They allege that, if it had made all private property at sea exempt from capture, then the United States would have agreed to it. It seems hardly necessary to remark that, even if this allegation were absolutely true, it would be as absolutely irrelevant; for what we have to deal with is the Declaration as it is, and not as it would be if it were entirely and essentially different. And, as it is, the United States have unhesitatingly rejected it.

But is the allegation absolutely true? Dana gives the following account of what occurred:

"When asked to give in our adhesion to the four articles of "the Declaration of Paris, the reply was that we were not willing "to debar ourselves from the right to use privateers in any "possible exigency of war, as our policy was to have a small "navy, and we always had a large and very much exposed com- "merce; but that we would agree to the articles, if all private pro- "perty at sea should be held exempt from capture. This, known "as the 'American Amendment,' or 'Marcy Amendment,' was "well received by the other parties to the Articles of Paris, but "was prevented from being adopted by the opposition of Eng- "land. *Subsequently the United States withdrew its proposal; "seemingly unwilling to renounce the right to use privateers, even "on the terms of exemption of all private property.*"[1]

Another American writer on the Law of Nations tells us that

"one of Mr. Buchanan's earliest acts after coming into office, it "is said, was to direct our ministers abroad not to press Mr. "Marcy's proposition,"

and as Mr. Marcy's proposition was dated July 28,

[1] Wheaton's *International Law*, with Notes by Richard Henry Dana, London, 1866, Note to Art. 476.

1856, while Mr. Buchanan came into office on March 4, 1857, it will be seen that the proposition was withdrawn within nine months of its being first made.[1]

Thus it will be seen, first that the "Marcy "amendment" was a suggestion made by Mr. Marcy on behalf of the United States Executive Government. In its nature it seemed a *reductio ad absurdum* of the whole Declaration; but what is more important is that there is nothing to show or to suggest that it had or would have had the support of the Senate of the United States, without whose assent the Declaration could not have been accepted; and that, even if Mr. Marcy's conditions could have been and had been assented to by the other signatories, and if he had thereupon signed the Declaration, the Senate might as readily have thrown over and repudiated Mr. Marcy and his (altered) Declaration, as it subsequently threw over and repudiated Mr. Reverdy Johnson and the "Alabama" Convention which he had, not merely suggested, but actually signed on behalf of the United States Executive. Mr. Marcy, in short, had no adequate authority to agree either to such a Declaration as this was, or to such as he suggested it might be made, so as fully and finally to bind the United States. And being, as no doubt he was, fully aware of this, his suggestion, which he knew well would not be accepted, of the exemption of all private property at sea from the incidence of warfare, must rather be regarded as a method of putting aside the matter than as a serious proposal; a view of the incident which is supported by the fact that Mr. Marcy's suggestion was with-

[1] *Introduction to the Study of International Law*, by Theodore D. Woolsey. Fifth edition. London, 1879, p. 214.

drawn almost as soon as made, and was never after seriously pressed for adoption.

The real serious objection which, from the United States point of view, existed to the Declaration, and which made it absolutely unacceptable, was, as Mr. Dana tells us, that it prohibited Privateering, which the Americans were as determined not to renounce as in the days of Jefferson.

It can hardly be contended, therefore, that Mr. Marcy's suggestion represented an authoritative proposal on the part of the United States.

But even if it did, it would not touch the merits of the Declaration as the Declaration stands, except so far as to show that, as it stands, it is unacceptable to the United States.

The treaty between the United States and Italy of Feb. 26, 1871, already alluded to, seems indeed, both on account of its peculiarity and of its comparatively recent date, to require some notice; for it is not, like Mr. Marcy's despatch, a mere official suggestion, but a definite authoritative convention. Article XXI. of this treaty—which provides that, in case of war between the United States and Italy, merchants shall have six months to clear up their affairs, and that women, children, scholars, fishermen and others shall not be interfered with—declares that

"neither the pretence that war dissolves treaties, nor any other "whatever shall be considered as annulling or suspending this "article"

—a strange provision which, worded as it is, distinctly suggests that war between the two countries *will* be held, as is usual, to annul all the other articles of the treaty, excepting only this one alone. This suggestion moreover is confirmed by a con-

sideration of the other articles themselves, several of which are of such a nature as could not subsist in a state of war and as must necessarily be annulled by the outbreak of war.

The more notable articles of this Treaty, however, are Articles XV., XVI., and XII. Article XV. embodies a list of what shall be held to be Contraband of War. Article XVI. provides that "Free ships "shall also give freedom to goods" but that this principle

"shall be understood as applying to those Powers only who re-
"cognize this principle, but if either of the two contracting
"parties shall be at war with a third, and the other neutral, the
"flag of the neutral shall cover the property of enemies whose
"governments acknowledge this principle, and not of others."

This amounts to *an adoption as between the United States and Italy of the second article of the Declaration of Paris to the exclusion of its first*, or Privateering, article, which is contrary to the engagement agreed to by Count Cavour and the Marquis of Villamarina (plenipotentiaries of Sardinia) on the 16th April, 1856, that

"the Powers which may have signed it [the Declaration of
"Paris] or which may have acceded thereto, cannot, in future,
"enter, in respect of the application of the law of neutrals in
"time of war, into any engagement which does not rest at once
"upon the four principles, the objects of the present Declara-
"tion."

How it could have failed to occur to the Italian Government, on whose behalf this engagement was taken by Count Cavour, that it was thereby debarred from agreeing to Article XVI. of this treaty of 1871 which reposes on one only of the four principles and not upon the others, is a question to which it is not easy to suggest a reply.

The most remarkable, however, of all the articles of this remarkable Treaty is Article XII. which provides that—

"XII. The High Contracting Parties agree that, in the unfortunate case of a war between them, the private property of their respective citizens and subjects, with the exception of contraband of war, shall be exempt from capture or seizure, on the high seas or elsewhere, by the armed vessels or by the military forces of either country; it being understood that this exemption shall not extend to vessels and their cargoes which may attempt to enter a port blockaded by the naval forces of either party."[1]

This, as will be seen, provides that in case of war between the United States and Italy, the "private property" of the citizens of either (with the exceptions of contraband of war and of property laden on vessels attempting to break a blockade) shall be exempt from capture by the other. Putting aside, for the moment, the consideration that this article does not provide, as Article XXI. does, against its own annulment by war, and assuming, for the moment, that it would subsist during war, the effect of the whole contract would be (1) that Privateering is maintained; (2) that the neutral flag covers the cargo, for those Powers which have agreed to the principle, but not for others; and (3) that in case of war between the United States and Italy, neither belligerent can capture the "private property" of citizens of the other belligerent.

It is submitted *in limine* that Italy had parted in 1856 with her power to make any engagments so inconsistent with the Declaration of Paris, while still professing to be bound thereby.

But, however that may be, there remains the fact

[1] *State Papers*, 1870-71, p. 91.

that, even if the Treaty be good in all its parts, it binds the United States and Italy alone, as between themselves and no other Powers whatever; and that for all other Powers the state of things remained after the treaty precisely where and as it was before the treaty. It is the case over again of the treaty between the United States and France of 1778, as to which the United States themselves clearly defined the position to be as above stated.

The United States and the Declaration of Paris: recent action in the American-Spanish War of 1898.

The conduct held by the United States in the war with Spain was notable. On 23rd April, 1898, the United States Ambassador in London made to Lord Salisbury the following notification:

"I have been informed of the intention of the Government of "the United States, in the event of hostilities between that "Government and Spain, not to resort to Privateering, but to "adhere to the following recognized rules of International Law "first, the neutral flag covers enemy's goods, with the exception "of contraband of war: second, neutral goods, with the excep- "tion of contraband of war, are not liable to capture under the "enemy's flag: and, third, blockades, in order to be binding, "must be effective."[1]

[1] "Declaration of Paris.—Mr. Gibson Bowles: I beg to "ask the First Lord of the Treasury whether he will state the "terms in which the President of the United States of North "America has signified to Her Majesty's Government his "instructions with regard to the four articles of the Declaration "of Paris of 1856 in reference to the present war with Spain; "and whether he will lay upon the Table the Papers embodying "any declarations or announcements made either by the United "States or by Spain as regards these four articles which have

A Proclamation by President McKinley, of 26th April, 1898, was as follows :

"Whereas, by an Act of Congress approved April 25th, 1898, "it is declared that war exists and that war has existed since the "21st day of April, A.D. 1898, including said day, between the "United States of America and the Kingdom of Spain; and

"Whereas, it being desirable that such war should be con- "ducted upon principles in harmony with the present views of

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"been communicated to Her Majesty's Government in con- "templation or in consequence of the outbreak of the war?

"The First Lord of the Treasury: With one slight exception "I believe that all the information at our disposal has been com- "municated to the public in the *Gazette* of last Tuesday. I will "read to my honourable Friend the official notification by the "American Government:

"'London, April 23.

"'My Lord,—I have the honour to acquaint your Lordship "'that I have been informed of the intention of the Government "'of the United States, in the event of hostilities between that "'Government and Spain, not to resort to privateering, but to "'adhere to the following recognized rules of International "'Law:

"'First, the neutral flag covers enemy's goods, with the excep- "'tion of contraband of war;

"'Second, neutral goods, with the exception of contraband of "'war, are not liable to capture under the enemy's flag; and

"'Third, blockades, in order to be binding, must be effective.

"'I have, etc.,

"'JOHN HAY.

"'The Most Honourable the Marquis of Salisbury, etc.'

"The exception to which I referred is an explanatory statement "by the Spanish Government that the organization of auxiliary "cruisers of the navy will be based on the Prussian decree of "July 24th, 1870.

"Mr. Gibson Bowles: Am I right in understanding that the "Declaration of the United States is a declaration of intention "and not an undertaking?

"The First Lord of the Treasury: I have read out the exact "words. The word is 'intention.'" (*Hansard*, 6th May, 1898.)

"nations and sanctioned by their recent practice, it has already "been announced that the policy of this Government will be not "to resort to privateering, but to adhere to the rules of the "Declaration of Paris;

"Now, therefore, I, William McKinley, President of the "United States of America, by virtue of the power vested in me "by the Constitution and the laws, do hereby declare and pro- "claim:

"1. The neutral flag covers enemy's goods, with the exception "of contraband of war.

"2. Neutral goods, not contraband of war are not liable to "confiscation under the enemy's flag.

"3. Blockades in order to be binding must be effective." (By the President of the United States of America: a Proclamation, 26th April, 1898.)[1]

It is worthy of remark here that, by the United States Constitution, the power to "declare war, grant "letters of marque and reprisal, and make rules "concerning captures on land and water," as well as "to define and punish . . . offences against the law of nations" is given, not to the President, but to Congress.

It will be noticed that both these documents are essentially different from the Declaration of Paris. The first article of that Declaration has disappeared. There is no "Privateering is and remains abolished" —there is a studied avoidance of anything approaching that, and in its stead there is in the first document an announcement of the "intention" of the United States not to resort to Privateering, and in the second an announcement that "the policy" of this Government "will be" not to resort to it in that particular war. The right to resort to Privateering is wholly reserved; all that is done with regard to

[1] *The American-Spanish War*, a History by the War Leaders. Norwich, Conn., Chas. C. Haskell and Son, 1899, p. 575.

that is to express an intention, as a matter of policy, not to resort to it on that particular occasion; while, on the other hand, the remaining three points of the Declaration (re-numbered for this occasion) were, in the second document declared and proclaimed and in the first were affirmed to be what they admittedly are not, "recognized rules of International Law."

Here then was another proof that Privateering is not abolished; here another proof that the United States were still as determined as ever not to agree to or to be bound by the indivisible four points of the Declaration of Paris, even though they declared an intention, as a matter of policy, to act during that war as those must act who were bound by it. In any other war a different and contrary intention might be arrived at and a different policy pursued. The right to take such a course on any future occasion was in no way relinquished or impaired; the United States still remained as much outside of and unbound by the Declaration of Paris as it had ever been.

Finally there is no hint given here of any desire on the part of the United States to revive Mr. Marcy's proposal for the exemption from capture of all private property at sea, though the opportunity was as good as that furnished by any other war for seeing whether it could possibly be worked consistently with war at all. To abstain from capturing all private property was as much within the competency of the United States as to abstain from Privateering; it involved no infraction of the Law of Nations and required no consent of any other Powers, least of all the consent of the other belligerent. Had this been done the United States would have shown, not only its sincerity in the suggestion it had so often made as a reply to invitations to accede to the Declaration of

Paris, but its belief that the suggestion itself was practicable and could be adopted by a belligerent without ruin to its belligerent power at sea. And then the world might, for the first time, have beheld the rejoicing spectacle of a naval war accompanied by a commercial peace. But no hint was given of any desire to bring about this state of things by showing that it was possible. On the contrary, there never was a more strenuous pursuit of all private property that could be called contraband of war, never more determined operations to blockade the Cuban ports against all such private property, and never more consistent confiscation of all such property when captured.

It was, in short, made clear that the United States, when themselves at war, though ready to waive their right to commission Privateers, which, with the entirely insignificant trade of Spain and the distance of the Spanish peninsula from America, would in this instance have had but the smallest field for their action; and though ready also to waive their right to capture Spanish goods under the neutral flag, there being in this case, little of such goods to capture and those difficult of access—yet were as determined as ever to maintain both rights for future exercise when found convenient; as determined as ever to refuse the Declaration of Paris; and as little disposed as any other State to adopt the suggestion originally made by one of their own ministers to exempt all private property from capture.

Quite as notable was the action of Spain. The decree published by the Government of that country on 24th April, 1898, runs as follows:[1]

[1] *Times*, Monday, 25th April, 1898.

"The Government is of opinion that the fact of not having "adhered to the Declaration of Paris of 1856 does not exempt "us from the duty of respecting the principles therein enunciated.

"*The principle which Spain unequivocally refused to admit at "that time was the abolition of privateering, and the Government "now considers that it is indispensable to make the most absolute "reserves on this point, in order to maintain our liberty of action "and the uncontested right to have recourse to privateering when we "consider it expedient*, first of all by organizing immediately a "force of cruisers auxiliary to the navy, which will be composed "of vessels of our mercantile marine and will co-operate with "equal distinction in the work of our navy."

This preamble is succeeded by the following regulations:

"Clause I.—The state of war existing between Spain and the "United States annuls the treaty of peace and amity of 27th "October, 1795, of the protocol of 12th January, 1877, and of all "other agreements, treaties, or conventions up to the present in "force between the two countries.

"Clause II.—From the publication of these presents, 30 days "are granted to all ships of the United States anchored in our "harbours to take their departure free of hindrance.

"Clause III.—Notwithstanding that Spain has not adhered "to the Convention signed in Paris in 1856, the Government, "respecting the principles of the law of nations, proposes to ob- "serve and hereby orders to be observed the following regulations "of maritime law:

"1.—Neutral flags cover the enemy's merchandise, except con- "traband of war.

"2.—Neutral merchandise, except contraband of war, is not "seizable under the enemy's flag.

"3.—A blockade to be obligatory must be effective—that is to "say, must be maintained by sufficient force to prevent access to "the enemy's littoral.

"Clause IV.—The Spanish Government, *upholding its right to "grant letters of marque*, which said right it reserved to itself by "the Note sent by it to France on 16th May, 1857, *will for the "present confine itself to organizing with the vessels of the mercantile "marine a force of auxiliary cruisers which will co-operate with "the navy* according to the needs of the campaign, and will be "under naval control.

"Clause V.—In order to capture the enemy's ships and con- "fiscate the enemy's merchandise and contraband of war, under

"whatever form, the auxiliary cruisers will exercise the right of "search on the high seas and in the waters under the enemy's "jurisdiction, in accordance with international law and the "regulations which will be published.

"Clause VI.—Included in the term contraband of war are "cannon, quick-firing guns, shells, rifles of all patterns, cutting "and thrusting weapons and arms of precision, bullets, bombs, "grenades, fulminates, capsules, fuses, powder, sulphur, dyna- "mite, explosives of all kinds, as well as uniforms, straps, pack "saddles, and equipment for artillery and cavalry, marine "engines, and in general all appliances used in war.

"Clause VII.—To be regarded and judged as *pirates* with all "the rigour of the law are captains, masters, officers, and *two- "thirds* of the crew of *vessels which, not being American*, shall "commit *acts of war* against Spain, even if they are provided "with letters of marque issued by the United States."

This is, in substance, the same as the Proclamation by the President of the United States, except that it more expressly, though not more effectually, reserves the right to commission Privateers, and that it also discloses a present intention to "organize with the "vessels of the mercantile marine a force of auxiliary "cruisers, which will co-operate with the navy"—an excellent and adequate description of Privateers and recognized indeed to be such by the language of the decree itself. It was further disclosed by a reply of the First Lord of the Treasury, in the House of Commons on 6th May, 1898, that the organization of these "auxiliary cruisers" would be "based on the "Prussian decree of 24th July, 1870," whereby Prussia, while still pretending to adhere to the Declaration of Paris, had undertaken to abolish the article thereof which abolished Privateering, an example subsequently followed by Russia, and which was accepted by Lord Granville in 1870 as an adequate evasion of the Declaration.

In 1898, therefore, the United States and Spain

added their testimony to that of Prussia and Russia. They testified that Privateering is not abolished but still subsists; that Lord Clarendon's condition of 1856 that Privateering should be "abolished for "ever" was still uncomplied with; and that the supposed compensation to Great Britain for the renunciation of her maritime rights was still non-existent. They assumed (which the Congress of Paris had declared not to be allowable) to divide the four indivisible points of the Declaration, and while willing, during that war, to act as though they accepted the last three, they assumed to reject the first of them. They were both as determined as ever not to accept the Declaration of Paris, as determined as ever not to agree to the "uniform doctrine" and the "fixed "principles" it professed to embody. Well may that competent authority Professor T. E. Holland conclude that a declaration of maritime law to which the United States are not a party "is of little "worth."[1]

[1] *Times*, 25th April, 1898.

CHAPTER XVIII.

Conclusion.

By all that has preceded, it has, I submit, been abundantly made clear that the principles assumed to be laid down by the Declaration of Paris are novel innovations in and at variance with the Law of Nations; that the Declaration itself is false both in fact and in principle; that it possesses no sufficient authority; and that it is so highly injurious to the interests of Great Britain as to amount to the deprival of the greater part of her warlike strength.

That this latter conclusion is one shared by competent statesmen, as well British as others, is made clear by the opinions quoted in the Appendix (A) which follows.

On a review of the whole matter it must be evident that Great Britain, so long as she remains bound by this Declaration, is in any war debarred from the exercise of the greater part of her maritime strength. The knowledge that this is so materially affects her position in peace, and deprives her of the preponderant weight and authority which her voice always had, so long as it was known that it was capable of being supported by the tremendous force that so pre-eminent a maritime power could bring to bear on the resources of an enemy.

This being so it follows that the very first duty of all British statesmen, who have at heart the interest

and the security of their country, is to consider how to free her from the paralyzing fetters of this Declaration. In order to effect this it is necessary that the Declaration should be openly denounced and repudiated; for until it is repudiated it must be held as binding. Its falsity and the want of previous authority and subsequent sanction are not sufficient to allow it to be simply disregarded in time of war; they are more than sufficient to invite its denunciation and repudiation in time of peace.

A simple announcement by diplomatic note to the signatory Powers would suffice for this; and from the day that Great Britain announces her resumption of the maritime rights which made her powerful and kept her secure, from that day and not before it, will she resume her due place among the nations of the earth which are respected because it is known that they are strong.

APPENDICES.

APPENDIX A.

OPINIONS OF BRITISH AND OTHER STATESMEN ON THE DOCTRINE "FREE SHIPS MAKE FREE GOODS," AND ON THE DECLARATION OF PARIS AND ITS EFFECTS.

King's Speech, February, 1801.

A convention has been concluded by that court [of St. Petersburg] with those of Copenhagen and Stockholm, the object of which, as avowed by one of the contracting parties, is to renew their former engagements for establishing, by force, a *new code of maritime law, inconsistent with the rights and hostile to the interests of this country.*

In this situation, I could not hesitate as to the conduct which it became me to pursue. *I have taken the earliest measures to repel the aggression of this hostile confederacy and to support those principles which are essential to the maintenance of our naval strength,* and which are grounded on the system of public laws, so long established and recognized in Europe.[1]

Mr. William Pitt, 2nd February, 1801.

If, after a full discussion of this question [respecting our differences with the Northern Powers as to the Armed Neutrality] it should appear that the claim which this country has made is founded on the clearest and most indisputable justice—if it should be proved that our greatness, nay, our very existence as a nation, and everything that has raised us to the exalted situation which we hold, depends upon our possessing and

[1] *Speeches of William Pitt in the House of Commons,* London, 1817, p. 221.

exercising this—if, I say, all this should be proved in the most satisfactory manner, still the honourable gentleman (Mr. Grey) is prepared seriously to declare in this House, that such are the circumstances in which we stand, that we ought publicly and explicitly to state to the world that we are unequal to the contest, and that we must quietly give up for ever *an unquestionable right, and one upon which not only our character, but our very existence as a maritime power depends.*[1]

MR. WILLIAM PITT, 2ND FEBRUARY, 1801.

With respect to the law of nations, I know that the principle upon which we are now acting, and for which I am now contending, has been universally admitted and acted upon, except in cases where it has been restrained or modified by particular treaties between different states. And here I must observe, that the honourable gentleman has fallen into the same error which constitutes the great fallacy in the reasoning of the advocates for the Northern Powers, namely, that every exception from the general law by a particular treaty, proves the law to be as it is stated in that treaty; whereas the very circumstance of making an exception by treaty, proves what the general law of nations would be, if no such treaty were made to modify or alter it.[2]

MR. WILLIAM PITT, 2ND FEBRUARY, 1801.

The question is, whether we are to permit the navy of our enemy to be supplied and recruited—whether we are to suffer blockaded forts to be furnished with warlike stores and provisions—*whether we are to suffer neutral nations, by hoisting a flag upon a sloop, or a fishing boat, to convey the treasures of South America to the harbours of Spain, or the naval stores* of the Baltic to Brest or Toulon?[3]

MR. FOX, 25TH MARCH, 1801.

I have no hesitation in saying that, as a general proposition, *free bottoms do not make free goods, and that, as an axiom, it is supported neither by the law of nations nor of common sense.*

[1] *Speeches of William Pitt in the House of Commons*, London, 1817, p. 224.

[2] *Ibid.*, pp. 224 and 227.

[3] *Ibid.*, pp. 224, 227 and 231.

The law of nations is but a body of regulations founded upon equal justice and applying equally to all nations, for the common interest of all. If a state of war did not involve its own inconveniences, the temptations to war would be endless, and might keep nations in perpetual misery. *It is therefore for the general advantage that belligerents should feel the injuries of abridged and restricted trade, because it is an inducement to peace; and if, on the other hand, the commerce of a power at war, as well as the materials of offence, could be legally carried on by a neutral, the benefit of maritime preponderance would be wholly lost—a thing as much at variance with common sense, as it would be repugnant to reason.*[1]

Mr. William Pitt, 25th March, 1801.

Let it, however, be granted, that it was an act of sound policy to make that concession to Russia, that it was so at the time when our naval inferiority was too unfortunately conspicuous—when we were at war with France, with Spain, and with Holland, and when the addition of Russian hostility might have been a serious evil; does it follow that, at the present moment, when the fleets of all the Northern powers combined with those of France and Spain, and of Holland, would be unequal to a contest with the great and superior naval power of England—*does it follow, that we are to sacrifice the maritime greatness of Britain at the shrine of Russia?* Shall we allow entire freedom to the trade of France? —shall we suffer that country to send out her 12,000,000 of exports, and receive her imports in return, to enlarge private capital, and increase the public stock?—shall we allow her to receive naval stores undisturbed, and to rebuild and refit that navy which the valour of our seamen has destroyed?—*shall we voluntarily give up our maritime consequence, and expose ourselves to scorn, to derision, and contempt?* No man can deplore more than I do the loss of human blood—the calamities and the distresses of war; but *will you silently stand by, and, acknowledging these monstrous and unheard-of principles of neutrality, ensure your enemy against the effects of your hostility?* Four nations have leagued to produce a new code of maritime laws, in defiance of the established law of nations, and in defiance of the most solemn treaties and engagements, which

[1] *Speeches of the Rt. Hon. Charles James Fox in the House of Commons* London, 1818, vol. vi., p. 428.

they endeavour arbitrarily to force upon Europe; what is this but the same Jacobin principle which proclaimed the Rights of Man, which produced the French Revolution, which generated the wildest anarchy, and spread horror and devastation through that unfortunate country? Whatever shape it assumes, it is a violation of public faith, *it is a violation of the rights of England, and imperiously calls upon Englishmen to resist it even to the last shilling and the last drop of blood, rather than tamely submit to degrading concession, or meanly yield the rights of the country to shameful usurpation.*[1]

Lord Nelson, 13th November, 1801.

Lord Nelson rose to say a word or two upon the convention [with Russia of June 5, 1801], which he highly approved. *It had put an end to the principle endeavoured to be enforced by the armed neutrality in* 1780, *and by the late combination of the Northern powers, that free ships made free goods,—a proposition so monstrous in itself, so contrary to the law of nations, and so injurious to the maritime rights of this country, that, if it had been persisted in, we ought not to have concluded the war with those powers while a single man, a single shilling, or even a single drop of blood remained in the country.*[2]

Lord Grenville, 13th November, 1801.

The maxims of the British naval code do not depend on the fluctuating circumstances of occasional interest. They are fixed and permanent; drawn either from the immutable principles of natural law, or from the long-established usage of civilized societies. And whoever will turn from the fleeting dreams of modern speculation to the immortal works of the great masters of this science, will easily convince himself that *no practice can be more consonant to reason and justice than that of carrying on public war in some degree by individual exertions.*[3]

[1] *Speeches of William Pitt in the House of Commons*, London, 1817, p. 264.

[2] *Debate on the Convention with Russia of June* 5-17, 1801, *in the House of Lords, Nov.* 13, 1801.—*Parliamentary History*, vol. 36, p. 262.

[3] *Ibid.*, p. 245.

THE EARL OF DERBY, 22ND MAY, 1856.

I look upon this question as the most important which your Lordships can be called upon to discuss; and depend upon it that the time will come, if you do not estimate its importance now, you will deeply feel its consequences. My Lords, *I look upon this act of the Government as cutting off the right arm, as it were, of the country. I look upon it as depriving her of those natural advantages which her great maritime power has given her in war, and of the exercise of that superiority and those belligerent rights without which she is nothing. . . .* Whatever losses Russia may have suffered by this war, whatever embarrassments she may have experienced, I hesitate not to say that they are more than compensated by the adoption of *that one article, gratuitously inserted by the French and British Plenipotentiaries,* by which, in the words of Mr. Pitt, you have sacrificed the maritime greatness of England on the shrine of Russia.[1]

MR. RICHARD COBDEN, 28TH MAY, 1856.

Writing to me [Mr. W. S. Lindsay] on the 28th day of May, 1856, immediately after the Declaration, about "the danger of our "ships of war being mixed up with the squabbles of the Costa "Ricans and the Nicaraguans, until some morning we shall hear "that *Englishmen* and *Americans* have been firing on each other," —he goes on to say, "*Have you ever thought of the effects that "would be produced on English shipping property in case of a "war with America, or any other maritime power, owing to the "new principle now being formally admitted by us that free ships "make free goods? All our carrying trade would, of course, be in "the hands of neutrals. Who would carry goods in an English "bottom and pay twenty per cent. against capture when ships "under other flags would sail without any such burden?*"[2]

SIR STAFFORD NORTHCOTE, 17TH MARCH, 1862.

Commerce always sought the safest ships, and English vessels were then the safest, because neutral vessels were threatened by both belligerents. But *neutral, and not English vessels, would now be the safest in the event of war, and the effect of war would*

[1] *Parliamentary Debates*, vol. 142, page 535.

[2] *Manning the Royal Navy and Mercantile Marine*, p. 114, by W. S. Lindsay. London 1877.

infallibly be to throw out of employment a large amount of British shipping. These vessels would not, as some had thought, rot in our ports, but would be bought up and pass over to other nations, and English capital would be transferred with these ships to the Danes, Norwegians, etc.[1]

Mr. Buxton, 17th March, 1862.

Supposing that a war in which we were engaged were to last three, four, or five years, it was obvious that during that time the operations of our commercial shipping must be confined to our own ports, while *our foreign and distant trade would be carried on in neutral bottoms; and probably, when the war was over, we should find that the neutral country or countries had availed themselves of their opportunities by purchasing our unemployed ships* and attaching our sailors to their service by the offer of higher wages, and probably had laid the foundation of a commercial marine that would put an end for the future to our naval supremacy.[2]

Mr. John Bright, 17th March, 1862.

. . . *If England and France were belligerents* . . . the United States, the Baltic, Holland, the Greeks, and some other nations, should furnish ships to carry on the foreign trade of England, and the great bulk of the ships belonging to England would necessarily be kept in harbour. I suppose that is a fair statement of this case, and, I hope, so put that everybody can understand it who has not heard the case put before. *The mercantile ships of England and France would then be shut up, and the neutrals would be driving a trade more flourishing than they had ever had before. If England and the United States were at war, exactly the same result would follow. The ships of the French and the Dutch, the ships of the Baltic nations, of the Greeks, and ships from every part of the world, would carry on the trade between the United States and England, and we should have the mercantile navy of both countries shut up, to the absolute ruin, for a time and permanency, of some of the shipowners of both countries.* If anybody doubts this, I think they may take the opinions of the Liverpool Chamber of Commerce.[3]

[1] *Hansard*, vol. 165, p. 1615. [2] *Ibid.* p. 1638.
[3] *Ibid.* p. 1658.

Mr. Disraeli, 17th March, 1862.

By the Declaration of Paris we have given up the cardinal principle of our maritime code.

It is not at all a question of the shipping interest only. It concerns the whole maritime strength of this country, if we have acknowledged the principle that the flag of a neutral covers the cargo. *This must divert the commerce of the country in time of war into neutral bottoms;* and that, I believe, will deal a serious blow to our maritime strength. Our maritime strength will follow the carrying trade. If the carrying trade leaves the shores of this country, the maritime population will go with it; and if we have not a preponderance of the maritime population, we cannot have the preponderance of naval power.

Lord Russell.

No one was more impressed with the mischievous and improvident character—the alarming character—of the Declaration of Paris, especially the principle that the flag covers the cargo, than the present Secretary of State for Foreign Affairs. This highly esteemed nobleman [Lord Russell] thus expressed himself in regard to the Declaration of Paris: "*I cannot but think,*" he said, "*that, in point of principle, the declarations of the Treaty of Paris ought to be altered.* The whole matter is most unsatisfactory, and has a most grave bearing on our national supremacy."[1]

Mr. J. Stuart Mill, 5th August, 1867.

What obliges us, an insular people, to measure our necessities by the wild extravagances of the military rulers of the Continent? —extravagances which, let us do as we will, we cannot compete with; for if our wealth is equal to the effort, the numbers of our population are not. Why, then, do we find ourselves engaging deeper and deeper in this mad rivalry? Because *we have put away the natural weapon of a maritime nation—because we have abandoned the right, recognized by International Law and legitimated as much as the consent of nations can legitimate anything, of warring against the commerce of our enemies. We have made this sacrifice, receiving a merely nominal equivalent. We*

[1] *Hansard*, vol. 165, pp. 1700 and 1705.

have given up our main defence; but the other Powers who are parties to the transaction have not given up theirs; they have divested themselves not of their special means of warfare, but of ours; they have, with a good grace, consented not to use the weapons in which they are inferior, but to confine themselves to those in which the advantage is on their side. . . . Sir, *I venture to call the renunciation of the right of seizing enemy's property at sea a national blunder. Happily it is not an irretrievable one.* The Declaration of 1856 is not a treaty. It has never been ratified. The authority on which it was entered into was but the private letter of a Minister. *It is not a permanent engagement between nations; it is but a joint declaration of present intention; binding on us, I admit, until we formally withdraw from it,* for a nation is bound by all things done in its name, unless by a national act it disowns them. . . . Suppose that we were at war with any Power which is a party to the Declaration of Paris. If our cargoes would be safe in neutral bottoms, but unsafe in our own, then if the war was of any duration, *our whole export and import trade would pass to the neutral flags: most of our merchant shipping would be thrown out of employment, and would be sold to neutral countries,* as happened to so much of the shipping of the United States from the pressure of two or three, it might almost be said of a single cruiser. Our sailors would naturally follow our ships, and it is by no means certain that we should regain them even after the war was over. Where would then be your Naval Reserve? Where your means of recruiting the Royal Navy? *A protracted war on such terms must end in national disaster.*[1]

Prince Bismarck, 13th December, 1870.

The conversation then turned upon the four new points of international law respecting navigation—that no privateers should be fitted out, that goods should not be seized so far as they were not contraband of war, and that a blockade was only valid when effective, etc. The Chief concluded the conversation on this head by saying, "*We must see how we are to get rid of "this rubbish."*"[2]

[1] *Parliamentary Debates*, vol. 189, p. 877.

[2] *Bismarck. Some Secret Pages of his History*, by Busch, vol. i., p. 386.

Lord Salisbury, 6th March, 1871.

We are too apt to be misled by the great things the fleet did during the great Revolutionary war. No doubt it was a powerful instrument in hampering and ultimately in subduing Napoleon; but why? We had then the power of declaring a general blockade, and of searching neutral ships for enemies' goods. In your reckless Utopianism you have flung those two weapons away, and your fleet can only blockade the particular port to which it is sent, or bombard any fortress which may happen to be on the coast. I believe that *since the Declaration of Paris, the fleet, valuable as it is for preventing an invasion of these shores, is almost valueless for any other purpose.*[1]

Captain Mahan, 1890.

For two hundred years England has been the great commercial nation of the world. More than any other her wealth has been intrusted to the sea in war as in peace; yet *of all nations she has ever been most reluctant to concede the immunities of commerce and the rights of neutrals. Regarded not as a matter of right, but of policy, history has justified the refusal; and if she maintain her navy in full strength, the future will doubtless repeat the lesson of the past.*[2]

Lord Roberts, April, 1894.

As regards your inquiry as to my views about the Declaration of Paris, I feel hardly competent to offer a definite opinion on the subject, as it is one which I have not closely studied, although I am well aware of its naval and commercial importance. So far, however, as I can judge, *the effect of our adhering to the Declaration in the event of our being engaged in a serious war would be not only to deprive us of one of the most effective means of bringing pressure to bear on our enemy, but also to transfer a great part of our carrying trade to neutral Powers.* Whether on peace being concluded we should recover that trade seems to me extremely doubtful.[3]

[1] *Hansard* for March 6th, 1871.

[2] *The Influence of Sea Power upon History*, 1660-1783, by Captain A. T. Mahan, Boston, 1890, p. 540.

[3] *Scotsman*, April 6th, 1894.

APPENDIX B.

PRIVATEERS—THEIR COMMISSION AND INSTRUCTIONS.

(HARTWELL HORNE, PAGE 3.)

WITH regard to the issuing of letters of marque, the Lord High Admiral of Great Britain, or the Commissioners appointed for executing that office, or any three of such Commissioners, or any persons by them empowered or appointed, shall at the request of any duly qualified owner or owners of any ship or vessel duly registered according to the directions of the Act passed in the twenty-sixth and thirty-fourth years of his present Majesty (26 *Geo. III. c.* 60, *and* 34 *Geo. III. c.* 68) (provided such owner or owners give the bail or security hereafter specified), cause to be issued in the usual manner one or more commissions or letters of marque and reprisal, to any person or persons nominated by such owner to be commander, or (in case of death, successively) commanders of such ship or vessel; for the attacking, surprising, seizing, and taking, by and with such vessel or with the crew thereof, any place or fortress upon the land, or any ship, vessel, arms, ammunition, stores of war, goods or merchandise, belonging to or possessed by any of his Majesty's enemies, in any sea, creek, haven, or river (13 *Geo. II. c.* 4, § 2; 33 *Geo. III. c.* 66, § 9; 43 *Geo. III. c.* 160, § 7).

All persons applying for such commissions or letters of marque must make the application in writing, subscribed with their hands, to the Lord High Admiral, or other persons thus empowered, or to the Lieutenant or Judge of the High Court of Admiralty, or to his surrogate, and such application must set forth "a particular, true and exact description of the ship or vessel for which such commission or letter of marque and reprisals is requested, specifying the name and burden of such ship or vessel; what sort of build she is; and the number and nature of the guns, and what other warlike furniture and ammunition are on board the same; to what place the ship belongs; and the name or names of the principal owner or owners of such ship or vessel; and the number of men intended to be put on board the same (all which particulars must be inserted in every commission or letters of marque); for what time they are

victualled, and also the names of the commander and officers (33 *Geo. III. c.* 66, § 15; 43 *Geo. III. c.* 160, § 13. *Instructions for letters of marque against the goods of the French and Batavian Republics, Art.* 6. Note—The Instructions respecting the former were issued on the 17th May, 1803, concerning the latter on June 16th, 1803).

Further, every commander of a private ship or vessel of war, for which such commission or letters of marque shall be granted, must produce the same to the collector, customer, or searcher for the time being, of his Majesty's customs, residing at or belonging to the port whence such ship shall be first fitted out, or to their lawful deputies. And such collector, customer, &c. shall without fee or reward and as early as conveniently may be inspect and examine the said vessel; in order to ascertain her build and burden, the number of men, together with the number and nature of the guns on board. If, after examination, such vessel appear to be of such build and burthen, and to be manned and armed according to the tenor of the description inserted in the commission or letter of marque; or if she be of greater force and burthen than is therein specified; in such case the collector, &c. or his or their deputies shall immediately upon the request of the commander of such ship or vessel, give him gratis a certificate thereof in writing under his or their hand or hands; and such certificate shall be deemed a necessary clearance before the vessel or letter of marque thus commissioned, shall be permitted to sail from that port (33 *Geo. III. c.* 66, § 15; 43 *Geo. III. c.* 160, § 13).

The same statute likewise declares that in case any commander proceed out of port upon a cruise without such certificate of clearance, or with a force inferior to that specified in the commission or letter of marque, the latter shall be absolutely null and void: the commander thus offending shall be subject to the penalty of £1,000, recoverable with full costs of suit by any person, and shall also be imprisoned for such space of time as the Court shall direct, not exceeding one year for any one offence (*Ibidem*).

The collector, searcher, &c. or his or their deputies, who shall grant false certificates, shall for such offence forfeit their office; be for ever incapacitated from holding office under Government, and incur a penalty of £100, to be recovered in a similar manner. One half of the said penalty when recovered to be paid to the informer; and the other moiety to the treasurer of

the Corporation for the Relief and Support of the Sick, Maimed, and Disabled Seamen of the Merchant Service: and if such forfeiture be incurred in any outport, where a Corporation already is or may hereafter be established for those purposes, one moiety of the penalty is to be paid to the trustees for the use of such Corporation (33 *Geo. III. c.* 66, § 16; 43 *Geo. III. c.* 160, § 14).

Previously however to obtaining letters of marque, *bail must be given with sureties before the lieutenant and judge of the High Court of Admiralty or his surrogate, in the sum of* £3,000 *sterling if the ship carry more than* 150 *men, and if she carry a less number in the sum of* £1,500 *sterling* (*Instructions for letters of marque, &c., Art.* 15). Further, such sureties must prior to their being bound severally make oath before the Judge of the said Court of Admiralty of England, or Judge of any other Court of Admiralty in any other part of his Majesty's dominions, or his or their surrogates, that they are respectively worth more than the sum for which they are to be bound, over and above all their just debts. And in order to prevent frauds the Marshal of the Admiralty Court is enjoined to make diligent inquiry into the sufficiency of such bail and security, and to make report accordingly to the Judge or his surrogate before any commission or letter of marque can be granted (43 *Geo. III. c.* 160, § 12).

No Judge of any Vice-Admiralty Court established in the West Indian or American colonies can either directly or indirectly have any share or interest whatever in any privateer or letter of marque (41 *Geo. III. c.* 96, § 17). Nor can any judge, advocate, marshal, proctor, or any other officer of any Admiralty or Vice-Admiralty Court, either in England or in the Colonies possess any such interest, on pain of forfeiting his employment and also the sum of £500 to the use of his Majesty. And all advocates and proctors thus offending are for ever disqualified from practising their professions (33 *Geo. III. c.* 66, § 33; 43 *Geo. III. c.* 160, § 32).

Letters of marque are always subject to revocation.

APPENDIX C.

Letters of Marque, or Privateer's Commission, 1812.

George the Third by the Grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, to all people to whom these presents shall come, greeting. Whereas in consequence of the repeated insults and provocations which we have experienced from the Government of France we find ourselves compelled to take such measures as are necessary for maintaining the honour of our crown and the just rights of our subjects, and have, therefore, by and with the advice of our Privy Council, ordered that general reprisals be granted against the ships, goods and subjects of the French Republic, so that as well our fleets and ships as also all other ships and vessels that shall be commissionated by letters of marque and general reprisals or otherwise shall and may lawfully apprehend, seize and take the ships, vessels and goods belonging to the French Republic or to any persons being subjects of the French Republic or inhabiting within any of the territories of the French Republic, and bring the same to judgment in our High Court of Admiralty of England, or in any of our Courts of Admiralty within our dominions for proceedings and adjudication and condemnation to be thereupon had according to the course of Admiralty and the Laws of Nations; and whereas by our commission under our Great Seal of Great Britain, bearing date the 16th day of May, 1803, we have willed, required and authorized our Commissioners for executing the office of Lord High Admiral of our said United Kingdom, or any person or persons by them empowered or appointed to issue forth and grant letters of marque and reprisals accordingly, and with such powers and clauses to be therein inserted, and in such manner as by our said commission more at large appeareth. And whereas our said Commissioners for executing the office of our High Admiral aforesaid have thought *W. B.* fitly qualified, who hath equipped, furnished and victualled a ship called the , burthen of about tons (*here descriptive particulars are added*) and masts, mounted with carriage guns, carrying shot of pounds weight, and swivel-guns, and navigated with men, of whom one-third are landsmen,

and belonging to the port of , whereof the said *W. B.* is commander, and that *N. N.* are the owners. And whereas the said *W. B.* hath given sufficient bail and sureties to us in our said High Court of Admiralty according to the effect and form set down in our instructions made the 17th day of the aforesaid month of May in the 43rd year of our reign, a copy of which is given to the said *W. B.* Know ye therefore that we do by these presents issue forth and grant letters of marque and reprisals to, and do *license and authorise* the said *W. B.* to set forth in a warlike manner the said ship called the , under his own command, and therewith by force of arms to *apprehend, seize, and take the ships, vessels, and goods, belonging to the French Republic, or to any persons being subjects of the French Republic, or inhabiting within any of the territories of the French Republic,* excepting only within the harbours or roads of princes and states in amity with us, *and to bring the same to such port as shall be most convenient, in order to have them legally adjudged in our said High Court of Admiralty of England, or before the Judge of such other Admiralty Court as shall be lawfully authorized within our dominions,* which being finally condemned, it shall and may be lawful for the said *W. B.* to sell and dispose of such ships, vessels, and goods so finally adjudged and condemned in such sort and manner as by the course of Admiralty hath been accustomed. Provided always that the said *W. B.* keep an exact journal of his proceedings, and therein particularly take notice of all prizes which shall be taken by him, the nature of such prizes, the times and places of their being taken, and the values of them as near as he can judge, as also of the station, motion, and strength of the French as well as he or his mariners can discover by the best intelligence he can get, and also of whatsoever else shall occur unto him or any of his officers or mariners or be discovered or declared unto him or them or found out by examination or conference with any mariners or passengers of or in any of the ships or vessels taken or by any other person or persons or by any other ways and means whatsoever touching or concerning the designs of the French or any of their fleets, vessels, or parties and of their stations, ports and places, and of their intents therein, and of what ships or vessels of the French bound out or home, or to any other place, as he or his officers or mariners shall hear of, and of what else material in those cases may arrive to his or their knowledge, of all which he shall from time to time as he shall or may

have opportunity transmit an account to our said Commissioners for executing the office of our High Admiral aforesaid or their secretary, and keep a correspondence with them by all opportunities that shall present. And further provided that nothing be done by the said *W. B.* or any of his officers, mariners, or company contrary to the true meaning of our aforesaid instructions, but that the said instructions shall by them and each and every of them as far as they or any of them are therein concerned in all particulars be well and truly performed and observed. And We pray and desire all kings, princes, potentates, states, and republics being our friends and allies and all others to whom it shall appertain to give the said *W. B.* all aid, assistance, and succour in their ports with his ship, company, and prizes without doing or suffering to be done to him any wrong, trouble, or hindrance We offering to do the like when we shall be thereunto desired, and We will and require all our officers whatsoever to give him succour and assistance as occasion shall require. In witness whereof we have caused the Great Seal of our said Court to be hereunto affixed. Given at London the fifth day of September in the year of our Lord one thousand eight hundred and twelve, and in the fifty-second of our reign.

REGISTRAR.

APPENDIX D.

INSTRUCTIONS FOR PRIVATEERS, 21 JUNE, 1815.

In the name and on the behalf of His Majesty,
GEORGE P. R.

INSTRUCTIONS for the commanders of such merchant ships or vessels who shall have letters of marque and reprisals for private men-of-war, against the ships, goods, and subjects of France by virtue of our commission granted under our Great Seal of our United Kingdom of Great Britain and Ireland, bearing date the twenty-first day of June, one thousand eight hundred and fifteen. Given at our Court at Carlton House the twenty-first day of June, one thousand eight hundred and fifteen, in the fifty-fifth year of our reign.

ARTICLE I.—That it shall be lawful for the commanders of ships, authorized by letters of marque and reprisals for men-of-

war, *to set upon by force of arms and subdue and take the men-of-war, ships, and vessels, goods, wares, and merchandises belonging to France, or to any persons being subjects of France, or inhabiting within any of the territories of France,* saving always such exceptions as we shall at any time or times hereafter be pleased to declare; but so as that no hostility be committed, nor prize attacked, seized or taken within the harbours of princes and states in amity with Us, or in their rivers or roads, within the shot of their cannon, unless by permission of such princes or states, or of their commanders or governors-in-chief in such places.

II.—That the commanders of the ships and vessels so authorized as aforesaid shall *bring all ships, vessels, and goods which they shall seize and take into such port of this our realm of England, or some other port of our dominions as shall be most convenient for them, in order to have them legally adjudged* in our High Court of Admiralty of England, or before the Judge of any other Admiralty Court lawfully authorized within our dominions.

III.—That after such ships, vessels, and goods shall be taken and brought into any port, the taker, or one of his chief officers, or some other person present at the capture, shall be obliged to bring or send as soon as possibly may be three or four of the principal of the company (whereof the master, supercargo, mate, or boatswain, to be always two) of every ship or vessel so brought into port before the Judge of our High Court of Admiralty of England, or his surrogate, or before the Judge of such other Admiralty Court within our dominions lawfully authorized as aforesaid, or such person or persons as shall be lawfully commissioned in that behalf, to be sworn and examined upon such interrogatories as shall tend to the discovery of the truth concerning the interest or property of such ship or ships, vessel or vessels, and of the goods, merchandises, and other effects found therein; and the taker shall be further obliged at the time he produceth the company to be examined, and before any monition shall be issued to bring and deliver into the hands of the Judge of the High Court of Admiralty of England, his surrogate, or Judge of such other Admiralty Court within our dominions lawfully authorized, or others commissioned as aforesaid, all such papers, passes, sea briefs, charter parties, bills of lading, cockets, letters, and other documents and writings, as shall be delivered up or found on board any ship; the taker or one of

his chief officers, or some other person who shall be present at the capture, and saw the said papers and writings delivered up, or otherwise found on board at the time of the capture, making oath that the said papers and writings are brought and delivered in as they were received and taken, the same being first numbered and the number specified in the affidavit without any fraud, addition, subduction, or embezzlement, or otherwise accounting for the same upon oath to the satisfaction of the Court.

IV.—That the *ships, vessels, goods, wares, merchandise, and effects,* taken by virtue of letters of marque and reprisals as aforesaid, *shall be kept and preserved, and no part of them shall be sold, spoiled, wasted, or diminished; and that the bulk thereof shall not be broken, before judgment be given in the* High Court of Admiralty of England, or some other Court of Admiralty lawfully authorized in that behalf, that the ships, goods, and merchandises are lawful prize.

V.—That if any ship or vessel belonging to Us or our subjects, shall be found in distress by being in fight, set upon, or taken by the enemy, or by reason of any other accident, the commanders, officers, and company of such merchant ships or vessels as shall have letters of marque and reprisals as aforesaid, shall use their best endeavours to give aid and succour to all such ship and ships; and shall, to the utmost of their power, labour to free the same from the enemy, or any other distress.

VI.—That the commanders or owners of such ships and vessels, before the taking out letters of marque and reprisals, shall make application in writing, subscribed with their hands to our High Admiral of our United Kingdom of Great Britain and Ireland, or our commissioners for executing that office for the time being; or the lieutenant or judge of the said High Court of Admiralty, or his surrogate, and shall therein set forth a particular, true, and exact description of the ship or vessel for which such letter of marque and reprisal is requested, specifying the burden of such ship or vessel, and the number and nature of the guns, and what other warlike furniture and ammunition are on board the same; to what place the ship belongs, and the name or names of the principal owner or owners of such ship or vessels, and the number of men intended to be put on board the same, and for what time they are victualled, also the names of the commanders and officers.

VII.—That the commanders of ships and vessels having letters of marque and reprisals, as aforesaid, shall hold and keep, and are hereby enjoined to hold and keep, a correspondence by all conveniences, and upon all occasions, with our High Admiral of our United Kingdom of Great Britain and Ireland, or our Commissioners for executing that office for the time being, or their secretary, so as from time to time to render and give him or them not only an account or intelligence of their captures and proceedings by virtue of such commission, but also of whatever else shall occur unto them, or be discovered and declared unto them, or found out by them, or by examination of, or conference with, any mariners or passengers of, or in the ships or vessels taken, or by any other ways or means whatsoever touching or concerning the designs of the enemy, or any of their fleets, ships, vessels, or parties, and of the stations, sea-ports, and places, and of their intents therein; and of what ships or vessels of the enemy bound out or home, or where cruising, as they shall hear of; and of what else material in these cases may arrive at their knowledge, to the end that such course may be thereon taken and such orders given as may be requisite.

VIII.—That *no commander of any ship or vessel having a letter of marque and reprisal as aforesaid, shall presume, as they* will answer it at their peril, to *wear any jack, pennant, or other ensign, or colours usually borne by our ships;* but *that,* besides the colours usually borne by merchant ships, they do *wear a red jack, with the Union Jack described in the canton at the upper corner thereof near the staffs.*

IX.—That *no commander* of any ship or vessel, having a letter of marque and reprisal as aforesaid, *shall ransom, or agree* to *ransom,* or quit, or set at liberty, any ship or vessel, or their cargoes, which shall be seized and taken.

X.—That all captains or commanders, officers of ships, having letters of marque and reprisals, do send an account of, and deliver over, what prisoners shall be taken on board any prizes, to the commissioners appointed, or to be appointed for the exchange of prisoners of war, or the persons appointed in the sea-port towns to take charge of prisoners; and that such prisoners be subject only to the orders, regulations, and directions of the said commissioners; and that no commander or other officer of any ship having a letter of marque and reprisal as aforesaid do presume, on any pretence whatsoever, to ransom any prisoner.

XI.—That *in case the commander* of any ship having a letter

of marque and reprisals as aforesaid, *shall act contrary to these instructions*, or any such further instructions of which he shall have due notice, he shall *forfeit his commission* to all intents and purposes, *and shall, together with his bail, be proceeded against according to law, and be condemned in costs and damages.*

XII.—That all commanders of ships and vessels having letters of marque and reprisals shall, by every opportunity, send exact copies of their journals to the Secretary of the Admiralty, and proceed to the condemnation of their prizes as soon as may be and without delay.

XIII.—That the commanders of ships and vessels having letters of marque and reprisals shall, upon due notice being given to them, observe all such other instructions and orders as we shall think fit to direct from time to time for the better carrying on this service.

XIV.—That all persons who shall violate these or any other of our instructions shall be severely punished, and also required to make full reparation to persons injured contrary to our instructions for all damages they shall sustain by any capture, embezzlement, demurrage, or otherwise.

XV.—That *before any letter of marque* or reprisal for the purposes aforesaid shall issue under seal, *bail shall be given* with sureties before the Lieutenant and Judge of our High Court of Admiralty of England or his surrogate, in the sum *of three thousand pounds sterling if the ship carries above one hundred and fifty men; and if a less number, in the sum of fifteen hundred pounds sterling;* which bail shall be to the effect and in the form following:

Which day, time, and place personally appeared and who submitting themselves to the jurisdiction of the High Court of Admiralty of England, obliged themselves, their heirs, executors, and administrators unto our sovereign lord the king, in the sum of pounds of lawful money of Great Britain to this effect, that is to say, That whereas is duly authorized by letters of marque and reprisals, with the ship called the of the burden of about tons, whereof he, the said goeth master, by force of arms to attack, surprise, seize, and take all ships and vessels, goods, wares, and merchandises, chattels, and effects, belonging to France, or to any persons being subjects of France, or inhabiting within any of the territories of France, saving always

such exceptions as his Majesty may at any time or times hereafter be pleased to declare, excepting only within the harbours or roads within shot of the cannon of princes and states in amity with his Majesty; and whereas he, the said
hath a copy of certain instructions, approved of and passed by his Majesty in council, as by the tenor of the said letters of marque and reprisals and instructions thereto, relating more at large appeareth. If therefore nothing be done by the said
or any of his officers, marines or company, contrary to the true meaning of the said instructions and of all other instructions which may be issued in like manner hereafter, and whereof due notice shall be given him; but that such letters of marque and reprisals aforesaid, and the said instructions shall in all particulars be well, and duly observed and performed, as far as they shall the said ship, master and company, any way concern; and if they shall give full satisfaction for any damage or injury which shall be done by them or any of them, to any subjects of his Majesty, or of any foreign state in amity with his Majesty; and also shall duly and truly pay or cause to be paid to his Majesty, or the customers or officers appointed to receive the same for his Majesty, the usual customs due to his Majesty of and for all ships and goods, so as aforesaid taken and adjudged for prize—And moreover, if the said shall not take any ship or vessel, or any goods or merchandise belonging to the enemy or otherwise liable to confiscation, through consent or clandestinely, or by collusion, by virtue, colour, or pretence, of his said letters of marque and reprisals, that then this bail shall be void and of none effect; and unless they shall so do, they do all hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, wheresoever the same may be found, to the value of the sum of pounds before mentioned. And in testimony of the truth thereof, they have hereunto subscribed their names.

By command of His Royal Highness the Prince Regent, in the name and on the behalf of His Majesty.

(Signed) SIDMOUTH.

APPENDIX E.

American Privateers.

Notes on Henry Wheaton's *Digest of the Law of Maritime Captains and Prizes*. Original edition, New York, 1815.

Page 42. By the Act of Congress of 1812, concerning letters of marque, prizes and prize-goods, it is provided that before any commission of letters of marque and reprisal shall be issued, the owner or owners of the ship or vessel for which the same shall be requested by the commander for the time being, shall give bond to the United States with at least two responsible sureties, not interested in such vessel, in the penal sum of 5,000 dollars; or, if such vessel be provided with more than 150 men, then in the penal sum of 10,000 dollars; with condition that the owners, officers and crew, who shall be employed on board such commissioned vessels shall and will observe the treaties and laws of the United States, and the instructions which shall be given them according to law for the regulation of their conduct; and will satisfy all damages and injuries which shall be done or committed contrary to the tenor thereof by such vessel, and to deliver up the same when revoked by the President of the United States.

Page 45. By the law of the United States, it is enacted that if any citizen shall, within the territory or jurisdiction of the United States accept and exercise a commission to serve a foreign prince or state in war, by land or sea, the person so offending shall be guilty of a high misdemeanour, and shall be fined not more than 2000 dollars, and shall be imprisoned not exceeding three years. And it is likewise provided that if any person shall within any of the ports, harbours, bays, rivers, or other waters of the United States fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the fitting out and arming of any ship or vessel, with intent that such ship or vessel shall be employed in the service of any foreign prince or state, to cruize or commit hostilities upon the subjects, citizens or property of another foreign prince or state, with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States for any ship or vessel, to the

intent that she may be employed as aforesaid, every such person so offending shall upon conviction be adjudged guilty of a high misdemeanour, and shall be fined and imprisoned at the discretion of the Court in which the conviction shall be had, so as the fine to be inflicted shall in no case be more than 5000 dollars, and the term of imprisonment shall not exceed three years, and every such ship or vessel with her tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may have been procured for the building and equipment thereof shall be forfeited, one-half to the use of any person who shall give information of the offence, and the other half to the use of the United States. And by a subsequent Act, it is also provided that if any citizen of the United States shall, *without the limits of the same*, fit out or procure to be fitted out, or knowingly be concerned in the fitting out of a privateer for the purpose of cruizing against the subjects of a nation at amity with the United States or shall take the command or serve on board of such privateer, or purchase any interest in the same, he shall be adjudged guilty of a high misdemeanour and be punished by a fine not exceeding 10,000 dollars and imprisonment not exceeding ten years.

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